

EXHIBIT D

In the Matter Of:

LARBALL PUBLISHING Co. vs DUA LIPA

CV 1872

CHARLES CALELLO

January 23, 2024



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CHARLES CALELLO
LARBALL PUBLISHING Co. vs DUA LIPA

January 23, 2024

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LARBALL PUBLISHING COMPANY,
INC. and SANDY LINZER
PRODUCTIONS, INC.,
Plaintiffs,
v.
DUA LIPA, JONATHAN LYNDAL
KIRK ("DA BABY") d/b/a BABY
JESUS PUBLISHING, BOSCO KANTE,
CLARENCE COFFEE JR., SARAH
HUDSON, STEPHEN KOZMENIUK, EMI
MUSIC PUBLISHING (US) LLC,
UNIVERSAL MUSIC CORPORATION
and WARNER MUSIC CORP.
Defendants.

Case No.
22 CV 1872

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DEPOSITION OF CHARLES CALELLO
January 23, 2024

Reported by:
MARY F. BOWMAN, RPR, CRR
JOB NO. J10764535

CHARLES CALELLO
LARBALL PUBLISHING Co. vs DUA LIPA

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January 23, 2024

10:00 a.m.

Deposition of CHARLES CALELLO, held
at Mitchell Silberberg & Knupp, LLP,
437 Madison Avenue, New York, New York, before
Mary F. Bowman, a Registered Professional
Reporter, Certified Realtime Reporter, and
Notary Public of the States of New Jersey and
New York.

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APPEARANCES:

BROWN LLC

Attorneys for Plaintiffs

111 Town Square Place 400

Jersey City, New Jersey 07310

BY: ERIC SANDS, ESQ.

ZIJIAN "COCO" GUAN-BROWN, ESQ.

MITCHELL SILBERBERG & KNUPP, LLP

Attorneys for Defendants

437 Madison Avenue

New York, New York

BY: BRADLEY MULLINS, ESQ.

JAMES BERKLEY, ESQ.

CHRISTINE LEPERA, ESQ.

ELAINE NGUYEN, ESQ.

Also Present:

Silvio Facchin, Legal Videographer

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Calello

THE VIDEOGRAPHER: This is the media
labeled number one in the video-recorded
deposition of Charles Calello in the
matter of Larball Publishing Company,
Inc., et al., versus Dua Lipa, et al.

This deposition is being taken in
New York City, New York on January 23,
2024.

My name is Silvio Facchin. I'm the
certified legal video specialist. The
court reporter is Mary Bowman. And we are
both representing Esquire Deposition
Solutions.

We are now going on the record. The
time is 10:20 a.m.

Counsel, please state your
appearances for the record.

(Whereupon, counsel placed their
appearances on the audio record.)

THE VIDEOGRAPHER: Will the court
reporter please swear in the witness.

- - - -

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1	Calello	
2	CHARLES CALELLO,	10:20
3	called as a witness by the defendants,	10:20
4	having been duly sworn, testified as	10:20
5	follows:	10:20
6	EXAMINATION BY	10:20
7	MR. MULLINS:	10:21
8	Q. Good morning.	10:21
9	A. Good morning.	10:21
10	Q. Thank for being here today.	10:21
11	Could you please state your name for	10:21
12	the record?	10:21
13	A. Charles Calello.	10:21
14	Q. Have you ever gone by any other	10:21
15	names?	10:21
16	A. No.	10:21
17	Q. And where do you currently reside?	10:21
18	A. In Boca Raton.	10:21
19	Q. Would you state your address for the	10:21
20	record?	10:21
21	A. 23368 Mirabella Circle, Boca Raton,	10:21
22	zip is 33433.	10:21
23	Q. Thank you.	10:21
24	Have you ever had your deposition	10:21
25	taken before?	10:21

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1 Calello

2 A. Yes. 10:21

3 Q. How many times? 10:21

4 A. Three, four times. 10:21

5 Q. When was the last time? 10:21

6 A. It would be about eight, ten years 10:21

7 ago. 10:21

8 Q. Okay. We will come back to this and 10:21

9 get a bit more context, but just for now, since 10:22

10 you have been through this before, I am going to 10:22

11 give you some of the ground rules. 10:22

12 It might seem familiar, but just as 10:22

13 a refresher, this is as if you are in court. 10:22

14 You are under oath. You're sworn to tell the 10:22

15 truth. 10:22

16 Do you understand that? 10:22

17 A. Yes. 10:22

18 Q. We are entitled to your best answer. 10:22

19 So please don't guess answers, but you can 10:22

20 estimate if you would like. 10:22

21 Please speak audibly, give clear 10:22

22 answers, no nods, no uh-uhs. 10:22

23 Do you understand that? 10:22

24 A. Yes. 10:22

25 Q. We will try not to talk over each 10:22

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1 Calello

2 other. We'll give each other a moment between 10:22

3 question and answers. 10:22

4 Your counsel may make objections, so 10:22

5 please give them a chance to object if they 10:22

6 would like. But unless the objection is 10:22

7 privilege or unless you're instructed not to 10:22

8 answer, you should still answer the question 10:22

9 despite the objection. 10:22

10 We will take breaks at regular 10:22

11 times, but if you ever need a break, please just 10:22

12 let us know. We will try to not do it while a 10:22

13 question is pending, if that makes sense. 10:22

14 Is there anything today that would 10:22

15 prevent you from giving your full and honest 10:23

16 testimony? 10:23

17 A. No. 10:23

18 Q. Great. 10:23

19 Let's go back a moment to the 10:23

20 depositions that you have previously been a part 10:23

21 of. Okay? 10:23

22 You mentioned the last one may have 10:23

23 been eight or ten years ago. 10:23

24 What was the context of that 10:23

25 deposition? 10:23

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1 Calello

2 A. I produced music for a company in 10:23
3 Florida and I had a royalty arrangement with 10:23
4 them. They failed to pay the royalty 10:23
5 arrangement, so we had to take them to court. 10:23

6 Q. So were you the plaintiff, the 10:23
7 person suing in that lawsuit? 10:23

8 A. Yes, yes. 10:23

9 Q. Correct. 10:23

10 Do you know the name of the company 10:23
11 you were suing? 10:23

12 A. Smith Music Group. 10:23

13 Q. Okay. And were there any other 10:23
14 people suing with you? 10:23

15 A. No. 10:23

16 Q. Just you? All right. 10:23

17 And then so that was one deposition. 10:23
18 What would be the deposition prior to that have 10:23
19 been, if you recall? 10:23

20 A. In the '90s, I sued my distributor. 10:24

21 Q. And what was the name of the 10:24
22 distributor, do you recall? 10:24

23 A. I really don't. 10:24

24 Q. Okay. Have you ever been a 10:24
25 defendant in a lawsuit? 10:24

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1 Calello

2 A. Yes. 10:24

3 Q. And what would that have been? 10:24

4 A. Last year -- no, two years ago, I 10:24
5 was sued by a friend of mine for 1.47. 10:24

6 Q. I feel the need to ask what the 10:24
7 dispute was regarding. 10:24

8 A. It had to do with streaming. We 10:24
9 both owned a master, and I was going to stream 10:24
10 it and he didn't want it streamed, so we pulled 10:24
11 it. 10:25

12 The owner of the streaming company 10:25
13 died, and just before it was streamed, it was 10:25
14 played twice. 10:25

15 Q. Okay. 10:25

16 A. It was a stupid lawsuit. 10:25

17 Q. Were you able to resolve that 10:25
18 lawsuit? 10:25

19 A. Yes. 10:25

20 Q. Were you deposed in connection with 10:25
21 that lawsuit? 10:25

22 A. No. 10:25

23 Q. Just for the record, who would the 10:25
24 other party have been in that lawsuit? 10:25

25 A. Do I have to tell you? 10:25

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1 Calello

2 Q. We would appreciate it for the 10:25
3 record. 10:25

4 A. Frankie Valli and Kenny Nolan. 10:25

5 Q. Okay. And they were the plaintiffs? 10:25

6 A. Yes. 10:25

7 Q. And you were the defendant? 10:25

8 A. Yes. 10:25

9 Q. Thank you. 10:25

10 We might come back to some of this 10:25
11 but for now, we will move on. 10:25

12 So have you communicated with anyone 10:25
13 regarding your deposition today other than 10:25
14 counsel? 10:26

15 A. My wife. 10:26

16 Q. Your wife. 10:26

17 When would that have been? 10:26

18 A. 7:54 this morning. 10:26

19 Q. Okay. Did you discuss the substance 10:26
20 of your deposition? 10:26

21 A. No. 10:26

22 Q. So other than your wife, other than 10:26
23 counsel, is there anyone else you spoke with 10:26
24 about your deposition? 10:26

25 A. No. 10:26

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1	Calello	
2	Q. The answer is no?	10:26
3	A. No.	10:26
4	Q. Have you spoken with your counsel	10:26
5	about this deposition?	10:26
6	A. Yes.	10:26
7	Q. Did you meet with your counsel?	10:26
8	A. Yes.	10:26
9	Q. When did you meet?	10:26
10	A. Ten minutes ago.	10:26
11	Q. So was that -- was ten minutes ago	10:26
12	the first time you met with your counsel	10:26
13	regarding this deposition?	10:26
14	A. Today?	10:26
15	Q. In general.	10:26
16	A. No.	10:26
17	Q. When was the first time?	10:26
18	Regarding the deposition.	10:26
19	A. It was a week ago Friday in a Zoom	10:26
20	meeting and then yesterday.	10:27
21	Q. Okay. I'm not going to ask you what	10:27
22	you discussed with your counsel at these	10:27
23	meetings, but just generally, do you recall how	10:27
24	long the Friday meeting would have been?	10:27
25	A. It was scheduled for an hour, and we	10:27

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1 Calello

2 ran a little over. I don't remember how much 10:27

3 over. 10:27

4 Q. Okay. And the meeting tomorrow -- 10:27

5 or yesterday? 10:27

6 A. I don't know, maybe four hours, but 10:27

7 most of it, I blabbed about things. 10:27

8 Q. And, again, I don't want to know 10:27

9 what you spoke about with your counsel, but... 10:27

10 A. That were really not related to 10:27

11 this. 10:27

12 Q. Did you review any documents during 10:27

13 those meetings? 10:27

14 A. Review any documents? 10:27

15 Well, yes. 10:27

16 Q. Do you recall what those documents 10:27

17 were? 10:27

18 A. They showed me a document I had 10:27

19 prepared, which was dated November 1, 2023. 10:27

20 Q. Would that have been the report you 10:28

21 submitted in connection with this lawsuit? 10:28

22 A. Yes. 10:28

23 Q. Other than your report, did you 10:28

24 review any documents? 10:28

25 A. No. 10:28

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1 Calello

2 Q. Are you familiar with Barbara 10:28

3 Salani? 10:28

4 A. Yes. 10:28

5 Q. And you are aware she's also was an 10:28

6 expert in this lawsuit? 10:28

7 A. Yes. 10:28

8 Q. Was Ms. Salani present at any of the 10:28

9 meetings you had with counsel? 10:28

10 A. No. 10:28

11 Q. Have you spoken with Ms. Salani 10:28

12 regarding this deposition? 10:28

13 A. No. 10:28

14 Q. Did you speak with Ms. Salani 10:28

15 regarding her deposition? 10:28

16 A. No. I had no idea she was deposed 10:28

17 until I found out from counsel. 10:28

18 Q. When was the last time you spoke 10:28

19 with Ms. Salani? 10:28

20 A. At a party at her brother's house, 10:28

21 had to be three months ago. 10:28

22 Q. Approximately three months ago? 10:29

23 A. Yeah. 10:29

24 Q. At that time, did you discuss this 10:29

25 lawsuit at all? 10:29

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1 Calello

2 A. No, well, the setting was not 10:29
3 conducive for us to -- it was -- the 10:29
4 understanding, if you were at the party, you 10:29
5 would see we all hang around the kitchen and a 10:29
6 whole bunch of people were talking. So it was 10:29
7 not the place. 10:29

8 Q. Understood. 10:29

9 You do know Ms. Salani personally, 10:29
10 correct? 10:29

11 A. Yes. 10:29

12 Q. How long have you known her? 10:29

13 A. Maybe about five, six years. 10:29

14 Q. Okay. How did you meet Ms. Salani? 10:29

15 A. Through her brother. 10:29

16 Q. And her brother's name is? 10:29

17 A. Is Sergio. 10:29

18 Q. Sergio. 10:29

19 And who is Sergio? 10:29

20 A. Sergio was on the board of directors 10:29
21 of the Symphonic Orchestra, and I met him when 10:29
22 they asked me if I would be interested in taking 10:30
23 over the Pops division. And I became friendly 10:30
24 with him, and he lived down the street from me, 10:30
25 and seeing that he was worth a whole lot more 10:30

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1 Calello

2 money than me and had a boat, I kept the 10:30

3 relation going because he took me fishing. 10:30

4 Q. That is fair. 10:30

5 So at some point, you became aware 10:30

6 that there was going to be disputes regarding 10:30

7 the song Levitating, correct? 10:30

8 A. Yes. 10:30

9 Q. Do you recall when that was? 10:30

10 A. 2021. 10:30

11 Q. Okay. We will come back to that in 10:30

12 a bit. 10:30

13 So you become aware of this dispute 10:30

14 in 2021. When did you first discuss this 10:30

15 dispute with Ms. Salani? 10:30

16 A. When I called her and asked her if 10:30

17 she knew anybody at FAU. I know one of the 10:30

18 professors there, Michael Zager, and if there 10:31

19 was another professor there who would be 10:31

20 interested in serving as a musicologist. 10:31

21 And I found out that she taught 10:31

22 there, and she says, Well, I could probably do 10:31

23 it. 10:31

24 Q. Do you recall when that would have 10:31

25 been? 10:31

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1 Calello

2 A. I really don't. 10:31

3 Q. Okay. So when you were discussing 10:31

4 with her potentially serving as a musicologist 10:31

5 in this case, what did you discuss with her? 10:31

6 Did you explain the case to her? 10:31

7 A. I told her it involved several 10:31

8 songs, and that -- I said I didn't know a whole 10:31

9 lot about how the procedure goes, I said, but 10:31

10 maybe you want to listen to them to see if you 10:31

11 think that this is something you would be 10:31

12 interested in. 10:32

13 Q. Okay. And then -- 10:32

14 A. So I believe -- I'm -- I can't be 10:32

15 certain, but I believe I sent her a way to hear 10:32

16 the songs online or something like that. I 10:32

17 really don't remember. 10:32

18 Q. Do you recall if you expressed any 10:32

19 opinions you had regarding the songs at issue? 10:32

20 A. I'm not sure. I'm not sure. 10:32

21 I tried not to get myself to 10:32

22 influence her in any way because I knew that 10:32

23 they were looking for an unbiased opinion. 10:32

24 Q. Okay. And then did you -- after you 10:32

25 spoke with Ms. Salani and she stated that she 10:32

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1	Calello
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2	might be able to serve as an expert -- is that	10:32
---	--	-------

3	correct?	10:32
---	----------	-------

4	A. Yeah.	10:32
---	----------	-------

5	Q. Did you then suggest that to either	10:32
---	--	-------

6	of the plaintiffs in this lawsuit?	10:32
---	------------------------------------	-------

7	A. Yes.	10:32
---	---------	-------

8	Q. And who would that have been?	10:32
---	----------------------------------	-------

9	A. My friend Sandy Linzer.	10:33
---	----------------------------	-------

10	Q. Okay. Do you recall ever -- well,	10:33
----	--------------------------------------	-------

11	let me back up.	10:33
----	-----------------	-------

12	At the time you had spoken to	10:33
----	-------------------------------	-------

13	Ms. Salani about potentially serving as an	10:33
----	--	-------

14	expert in this dispute, had you drafted a report	10:33
----	--	-------

15	yet?	10:33
----	------	-------

16	A. Yes.	10:33
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17	Q. Yes.	10:33
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18	Was your report final at that point?	10:33
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19	A. I really don't know.	10:33
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20	Q. Do you recall if you shared your	10:33
----	-------------------------------------	-------

21	report in whatever version it was, if you shared	10:33
----	--	-------

22	that report with Ms. Salani?	10:33
----	------------------------------	-------

23	A. I don't remember.	10:33
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24	I believe that I sent a report to	10:33
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25	Jason back in 2019 -- 2021. So I did have a	10:34
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1 Calello

2 copy, I still had my copy, my computer copy of 10:34

3 it. 10:34

4 Q. And by "Jason," do you mean Jason 10:34

5 Brown? 10:34

6 A. Yeah. 10:34

7 Q. Let's back up a little bit. 10:34

8 So in 2021, were you asked by 10:34

9 someone to prepare a report? 10:34

10 A. Yes. 10:34

11 Q. And who would that have been? 10:34

12 A. Sandy Linzer. 10:34

13 Q. Okay. And what exactly did 10:34

14 Mr. Linzer ask you for? 10:34

15 A. He said that he was contacted by 10:34

16 some -- what do they call them? 10:34

17 I can't think of the word, but that 10:35

18 he was contacted by some people in the industry 10:35

19 that said, Hey, did you hear this song? It 10:35

20 sounds like your song Wiggle and Giggle or Don 10:35

21 Diablo. 10:35

22 So Sandy called me and he says, 10:35

23 Listen, he says, Would you do me a favor and 10:35

24 take a look at these? 10:35

25 So I took a look at them, and I gave 10:35

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1 Calello

2 him my opinion. 10:35

3 Q. Okay. And was that a written 10:35
4 opinion or verbal? 10:35

5 A. Not -- yeah, it was a verbal opinion 10:35
6 at that time. 10:35

7 Q. At that time? 10:35

8 And when did you discuss converting 10:35
9 that opinion from verbal to written form? 10:35

10 A. He asked me, he said, Could you 10:35
11 write out all the stuff you know about this? 10:35

12 So I never had done anything like 10:35
13 that. The last time he asked me to do it was 10:35

14 for another song that he had written, which was 10:36
15 several years ago. I think it was recorded by 10:36

16 Kelly Clarkson. And I listened to the song and 10:36
17 I said, You're not going to do anything with 10:36

18 this. I said, It's -- I said, I know of a song 10:36
19 that Earth, Wind & Fire recorded that is the 10:36

20 same. So he dropped investigating it. 10:36

21 So I was used to Sandy coming to me 10:36
22 with things like that. 10:36

23 Q. In this -- when Mr. Linzer brought 10:36
24 up the idea of this Kelly Clarkson song, we will 10:36
25 call it -- do you understand that, what I am 10:36

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1 Calello

2 referring to? 10:36

3 A. Yeah. It could have been -- I don't 10:36
4 really -- it could have been Kelly or any one of 10:36
5 the female singers. I really don't recall it to 10:36
6 that degree. 10:36

7 Q. Okay. In connection with the song 10:36
8 that he brought up to you prior to Levitating, 10:36
9 okay, Mr. Linzer asked for your opinion on 10:36
10 whether you thought there might be a claim, is 10:37
11 that correct? 10:37

12 A. Yes. 10:37

13 Q. And your answer was that you did not 10:37
14 think there was a claim because there was a 10:37
15 different song by Earth, Wind & Fire that shared 10:37
16 the same similarities? 10:37

17 A. With the previous song that he was 10:37
18 talking about that was recorded by one of the 10:37
19 female singers back -- it had to be five or 10:37
20 six years prior to this incident. 10:37

21 Q. Okay. So there was another song 10:37
22 prior to the incident you were being asked about 10:37
23 that shared similar music elements -- 10:37

24 A. Yeah, yeah. 10:37

25 Q. -- is that correct? Great. 10:37

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1 Calello

2 And because of that, you did not 10:37

3 think there was a claim? 10:37

4 A. Right. 10:37

5 Q. Great. In your communications 10:37

6 with -- we will start with Ms. Salani. 10:37

7 Do you know how you communicated, 10:37

8 email, phone, combination? 10:37

9 A. I spoke to her on the phone and then 10:37

10 I turned her over to Sandy. 10:37

11 And I did get a call from her when 10:38

12 she didn't get paid. So I called Sandy and I 10:38

13 said, Did you get a bill from her? 10:38

14 Q. Okay. When was that? 10:38

15 A. Oh, I guess it was several months 10:38

16 after I put them in touch with one another. 10:38

17 Q. Okay. After she had written her 10:38

18 report? 10:38

19 A. I assume so. I think that's what 10:38

20 she wanted to get paid for. 10:38

21 Q. Do you know if she did get paid? 10:38

22 A. Yeah. 10:38

23 Q. If you did have emails with 10:38

24 Ms. Salani, would you be willing to produce 10:38

25 those? 10:38

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1 Calello

2 A. Yes, yes. 10:38

3 Q. And with Mr. Linzer, did you 10:38

4 communicate via phone, email, text, otherwise? 10:38

5 A. All of the above. 10:38

6 Q. And, again, if you had written 10:38

7 communications with Mr. Linzer about this 10:38

8 dispute, would you be willing to produce those? 10:38

9 A. Certainly. 10:38

10 Q. Okay. So let's go back to 10:38

11 discussing the report with Ms. Salani, right? 10:39

12 Did you ever discuss the drafting of 10:39

13 her report with Ms. Salani? 10:39

14 A. No. 10:39

15 Q. Did you ever see a version of 10:39

16 Ms. Salani's report before it being finalized? 10:39

17 A. No. 10:39

18 Q. Have you seen Ms. Salani's report at 10:39

19 any point? 10:39

20 A. She may have sent it, but I don't 10:39

21 believe I ever read it. 10:39

22 I -- I tried to think about that 10:39

23 because -- but I don't ever remember -- I don't 10:39

24 ever remember looking at it. 10:39

25 Q. Okay. Did you ever discuss 10:39

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1	Calello	
2	Beethoven with Ms. Salani in connection with	10:39
3	preparing any of her reports in this case?	10:39
4	A. No.	10:39
5	Q. Ms. Salani interviewed for an	10:39
6	article, correct?	10:39
7	A. Yes.	10:39
8	Q. Do you recall when that was?	10:39
9	A. Maybe a year or so ago.	10:39
10	Q. Okay. Sometime in 2022, does that	10:40
11	sound right?	10:40
12	A. Yeah, I don't remember -- I forgot	10:40
13	about that. But it could have been about that	10:40
14	time.	10:40
15	Q. Do you know if that was before or	10:40
16	after you were discussing this lawsuit with her?	10:40
17	A. I don't remember.	10:40
18	Q. What was the highest level of	10:40
19	education you've completed?	10:40
20	A. I had one year of college. And	10:40
21	that's the extent of my formal education.	10:40
22	Q. And where was that?	10:40
23	A. Manhattan School of Music.	10:40
24	Q. And do you know what year that was?	10:40
25	A. 1959.	10:40

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24

1 Calello

2 Q. And you said it was for one year, 10:40
3 correct? 10:40

4 A. Yeah. 10:40

5 Q. And why did you stop attending? 10:40

6 A. All the things they taught, I 10:40
7 already had learned in high school because I 10:40
8 went to the first music and arts high school in 10:40
9 the United States. We went to school with 10:40
10 Connie Francis, Wayne Shorter, Sarah Vaughn, 10:40
11 they all went to that school. 10:41

12 And the music curriculum at the 10:41
13 school, we studied theory, and the theory we 10:41
14 studied in high school was more extensive than 10:41
15 what Manhattan School of Music was teaching. 10:41

16 Q. And what school was that? 10:41

17 A. Arts High School. 10:41

18 Q. And where was that located? 10:41

19 A. Newark, New Jersey. 10:41

20 Q. So other than high school and 10:41
21 obviously your preceding education and this one 10:41
22 year of college, do you have any other formal 10:41
23 education? 10:41

24 A. I took private lessons in 10:41
25 Schillinger. 10:41

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January 23, 2024

25

1 Calello

2 Q. And where would that have been? 10:41

3 A. Schillinger was originally the study 10:41

4 that they taught at the Berkley School of Music. 10:41

5 It used to be a Schillinger school. 10:41

6 The people that used the technique 10:41

7 were people like Glen Miller, George Gershwin 10:42

8 and my high school teacher studied it also. And 10:42

9 I became fascinating with the Schillinger system 10:42

10 of writing music, so I studied that for many 10:42

11 years. 10:42

12 Q. Did you receive any formal degrees 10:42

13 from anyplace? 10:42

14 A. No. But over the years, I've been 10:42

15 asked by colleges to speak to the faculty. 10:42

16 Q. Other than degrees, do you have any 10:42

17 professional certifications or licenses? 10:42

18 A. Well, this is embarrassing. The -- 10:42

19 one of the books credits me with having more hit 10:42

20 records than any other arranger. 10:42

21 Q. So you consider that a formal 10:42

22 certification or more of an accolade? 10:43

23 A. It's sort of both. And, also, I 10:43

24 happen to be in the Vocal Group Hall of Fame, 10:43

25 but you really don't want to hear me sing. 10:43

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1 Calello

2 Q. When were you inducted into that, 10:43
3 just out of curiosity? 10:43

4 A. Oh, probably early 2000, something 10:43
5 around there. As one of the Four Seasons, I 10:43
6 might add. 10:43

7 Q. Thank you. 10:43
8 Have you had any legal training? 10:43

9 A. No. 10:43

10 Q. And you're not an attorney, correct? 10:43

11 A. Absolutely not. 10:43

12 Q. So would it be fair to say that 10:43
13 you've spent your career primarily as an 10:43
14 arranger and producer of music? 10:43

15 A. Yes. 10:43

16 Q. Would you just explain what an 10:43
17 arranger is to me? 10:43

18 A. An arranger is a person that takes a 10:43
19 song and puts it together so it could be 10:43
20 performed. 10:44

21 Q. And can you just briefly describe 10:44
22 what the process would be of that? 10:44

23 A. I write notes on a piece of paper. 10:44
24 Those notes are copied by a copyist. They are 10:44
25 handed to musicians, and musicians play what I 10:44

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1 Calello

2 write. 10:44

3 Q. And what is the starting point 10:44
4 you're working from when you are arranging a 10:44
5 song? 10:44

6 A. What am I going to do? 10:44

7 Q. So are you presented with some 10:44
8 initial basis for the song? 10:44

9 A. Sometimes. Sometimes they leave it 10:44
10 up to me. 10:44

11 For example, when I wrote the bom, 10:44
12 bom, bom to Sweet Caroline, Neil Diamond wasn't 10:44
13 looking over my shoulder. 10:44

14 Q. So is there already an idea of a 10:44
15 song before you become involved or does it vary? 10:44

16 A. Songs given to arrangers and then 10:44
17 arrangers take the song and basically what they 10:44
18 do is they conceptualize how it is to be 10:45
19 performed. 10:45

20 For example, if a song is written 10:45
21 with basic chords, the arranger has the ability 10:45
22 to supplement the arrangement by using 10:45
23 additional chords. 10:45

24 The arranger will then create in 10:45
25 many cases the feel of how the song is to be 10:45

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1 Calello

2 performed. And usually, usually, after the 10:45
3 arrangement is written, it should have an 10:45
4 emotion attached to it. 10:45

5 So the arranger is the one that 10:45
6 actually creates the emotion for the singer to 10:45
7 sing. 10:45

8 Q. Okay. Thank you. 10:45

9 Do you get songwriting credit when 10:45
10 you are the arranger on a song? 10:45

11 A. No. When you write an arrangement, 10:45
12 for some reason, the arrangers cannot copyright 10:46
13 the arrangement because it's on an existing 10:46
14 piece of copy-written material, the song. 10:46

15 Q. Okay. 10:46

16 A. Now, if the song is PD and I write 10:46
17 the arrangement, I can copyright the arrangement 10:46
18 of a public domain song. 10:46

19 Q. And when you said, "PD," you mean 10:46
20 public domain? 10:46

21 A. Public domain. 10:46

22 Q. So there is a copyrighted or 10:46
23 copyrightable song in existence when the 10:46
24 arranger comes into the process? 10:46

25 A. Correct. 10:46

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1 Calello

2 Q. So how does the arranger get paid? 10:46

3 A. Usually, by check. 10:46

4 Q. Is it usually a flat fee? Is it a 10:46
5 percentage of royalties? Vary? 10:46

6 A. Well, I have a -- I have a -- 10:46
7 several ways of doing that. 10:46

8 Some pay the card rate. 10:46

9 Q. And just before -- what would the 10:46
10 card rate be? 10:46

11 A. Right now, it's 3,500 an 10:47
12 arrangement. 10:47

13 Q. So is that a flat fee for -- 10:47

14 A. Flat fee for an arrangement. 10:47

15 Then I have a family rate, which I 10:47
16 use for friends, and then sometimes I do it pro 10:47
17 bono. 10:47

18 Q. So you never receive a continuing 10:47
19 royalty interest? 10:47

20 A. If I produce the record. There is a 10:47
21 difference between producing a record and 10:47
22 arranging a record. 10:47

23 But I am an arranger/producer. 10:47

24 Q. So for the arrangement piece, there 10:47
25 is no royalty? 10:47

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1 Calello

2 A. No royalty. 10:47

3 Q. So on the producer piece, what is 10:47
4 the producing process that you go through? 10:47

5 A. You find the song in most cases. 10:47
6 You sort of convince the artist that they should 10:47
7 sing the song because it's good for them. And 10:47
8 most times, they don't want to sing the song 10:47
9 that becomes a hit, which is part of the humor 10:47
10 of our business. 10:47

11 And then you take the responsibility 10:47
12 of recording the vocal, teaching them the song 10:47
13 and then mixing the song and delivering it to 10:47
14 the mass -- the copyright holder who pays for 10:48
15 the session. 10:48

16 Q. And by that, do you mean the record 10:48
17 label? 10:48

18 A. Record label, or if it's an 10:48
19 individual. 10:48

20 Q. And when you produce a song, do you 10:48
21 receive a copyright interest? 10:48

22 A. No. 10:48

23 Q. Do you receive a royalty? 10:48

24 A. Royalty. 10:48

25 Q. Are you currently a member of the 10:48

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1	Calello	
2	faculty at any university or college?	10:48
3	A. No.	10:48
4	Q. Have you ever been a member of the	10:48
5	faculty?	10:48
6	A. No.	10:48
7	Q. Are you a member of any professional	10:48
8	associations?	10:48
9	A. The AF of M, Local 802, Local 47,	10:48
10	Sag-Aftra.	10:48
11	Q. Other than unions, are you a member	10:49
12	of any professional associations?	10:49
13	A. The American Society of Composers	10:49
14	and Arrangers.	10:49
15	Q. What about the American	10:49
16	Musicological Society?	10:49
17	A. No.	10:49
18	Q. The International Musicological	10:49
19	Society?	10:49
20	A. No.	10:49
21	Q. Society for Music Theory?	10:49
22	A. No.	10:49
23	Q. Do you consider yourself a	10:49
24	musicologist?	10:49
25	A. Yes.	10:49

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1 Calello

2 Q. And what is your understanding of 10:49
3 what a musicologist is? 10:49

4 A. Musicologist is someone who has 10:49
5 extensive knowledge of something and that has 10:49
6 done significant research in order to evaluate a 10:49
7 piece of music. 10:49

8 Q. Okay. And when you say, "evaluate a 10:49
9 piece of music," what do you mean? 10:49

10 A. To look at a composition, to 10:49
11 understand its form, to understand its harmonic 10:49
12 structure, rhythm structure, chordal structure 10:50
13 and to be able to analyze the placement of it. 10:50

14 Q. Have you received any formal 10:50
15 training in musicology? 10:50

16 A. My understanding is that there is no 10:50
17 formal education for musicology. 10:50

18 Q. So the explanation you just provided 10:50
19 of your understanding of what a musicologist is, 10:50
20 where is that derived from? 10:50

21 A. Well, it's funny, when I was asked 10:50
22 to do this, I looked up the word. And the 10:50
23 definition seems to be real vague. 10:50

24 Q. Do you recall where you looked up 10:50
25 the word? 10:50

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1 Calello

2 A. Well, the first place, I went 10:50
3 online, but I really don't remember. But I -- I 10:50
4 thoroughly researched it. 10:50

5 Q. Do you know any other musicologists? 10:51

6 A. Do I know any other musicologists? 10:51
7 Not offhand. 10:51

8 Q. Okay. Have you ever served as an 10:51
9 expert witness in a litigation before? 10:51

10 A. Yes. 10:51

11 Q. And what was that litigation? 10:51

12 A. It was -- there was a fellow who was 10:51
13 suing someone else for nonpayment of accordions 10:51
14 that were delivered from Italy to the United 10:51
15 States. And I was called in as an expert 10:51
16 witness to determine whether the keys of the 10:51
17 accordion were the correct size for the size of 10:51
18 the accordion. 10:52

19 Q. Okay. Did you prepare a formal 10:52
20 report? 10:52

21 A. No. 10:52

22 Q. Were you deposed? 10:52

23 A. No. 10:52

24 Q. Did you have to testify at trial? 10:52

25 A. Yes. 10:52

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1 Calello

2 Q. Was there any dispute about whether 10:52
3 you were qualified to serve as an expert in that 10:52
4 matter? 10:52

5 A. I played the accordion. Sadly. 10:52

6 Q. Other than that instance, have you 10:52
7 ever served as an expert in any other 10:52
8 proceeding? 10:52

9 A. No. 10:52

10 Q. Do you know when that dispute in 10:52
11 which you served as an expert occurred? 10:52

12 A. It had to be back in the '50s 10:52
13 because I was probably about 18 or 19 years old. 10:52

14 Q. So you served as an expert when you 10:52
15 were 18 or 19? 10:52

16 A. Yeah. My father was in the union, 10:52
17 and when they called for someone who could 10:52
18 actually play the accordion, my father said, My 10:52
19 son plays, so they sent me to court. 10:52

20 Q. Understood. 10:52

21 So since then until now, you have 10:52
22 not served as an expert, is that correct? 10:52

23 A. No. 10:52

24 Q. Do you currently own or operate any 10:53
25 business entities? 10:53

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1 Calello

2 A. Yes. 10:53

3 Q. And what would those be? 10:53

4 A. Calello Music Group, Inc. 10:53

5 Q. And we will start with that. 10:53

6 For Calello Music Group, Inc., what 10:53
7 is the business of that entity? 10:53

8 A. It provides my services for 10:53
9 entertainment projects. 10:53

10 I do concerts because I do my own 10:53
11 concerts. I produce records and still write 10:53
12 arrangements. 10:53

13 I also have a position in a 10:53
14 technology company, and I also have a publishing 10:53
15 company, Charles Street Music. 10:53

16 Q. So just to back up a little bit, for 10:53
17 Calello Music Group, just for the record, who 10:54
18 are the owners of that company? 10:54

19 A. Charles Calello. 10:54

20 Q. You are the sole owner? 10:54

21 A. Yes. 10:54

22 I think my wife is the sole owner. 10:54

23 Q. You or your wife are the sole 10:54
24 owners? 10:54

25 A. Yeah. 10:54

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1 Calello

2 Q. Does Calello Music Group, Inc. have 10:54
3 anything to do with the report that you provided 10:54
4 in this matter? 10:54

5 A. No, I don't believe so. 10:54

6 Q. And you mentioned a technology 10:54
7 company, is that correct? 10:54

8 A. Yes. 10:54

9 Q. What company is that? 10:54

10 A. It's called "Legends of Sound." 10:54

11 Q. And did you say you were on the 10:54
12 board of that company or -- 10:54

13 A. One of the principals. 10:54

14 Q. One of the principals of that 10:54
15 company. 10:54

16 And what is the business of Legends 10:54
17 of Sound? 10:54

18 A. It has technology -- to simplify, it 10:54
19 has technology that could take inexpensive 10:54
20 speakers and make them sound like Bose, but it's 10:54
21 also used to be applied to public domain records 10:55
22 and re-copyright records. 10:55

23 Q. So is that a -- like a -- is it 10:55
24 remastering or -- 10:55

25 A. No, you can't copyright remastered 10:55

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1 Calello

2 product. 10:55

3 Q. So what is the product that's 10:55
4 created when you employ this technology on a 10:55
5 public domain work? 10:55

6 A. The technology -- the technology 10:55
7 applies this patented technology, which was 10:55
8 invented by Tony Bongiovi, and this technology 10:55
9 is being used in numerous things like -- in 10:55
10 China, Australia, they use it for automobiles. 10:55
11 They put them in cars. 10:55

12 They haven't used it here in the 10:55
13 United States as yet. I'm not a part of that 10:55
14 company, but his company owns the patent, and we 10:55
15 have a 50-year license on the patent for us to 10:56
16 use the technology for music. 10:56

17 Q. Understood. Understood. 10:56
18 How long has that -- that Legends of 10:56
19 Sound been in operation? 10:56

20 A. Seven years. 10:56

21 Q. Seven years. 10:56

22 And I believe you mentioned a third 10:56
23 company, a publishing company, is that correct? 10:56

24 A. Yes. 10:56

25 Q. What is the name of that company? 10:56

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1 Calello

2 A. Charles Street Music. 10:56

3 Q. Charles Street Music. 10:56

4 Are you the sole owner of that 10:56

5 company? 10:56

6 A. Yes. 10:56

7 Q. Are you familiar with a company 10:56

8 called "Charles Calello Productions"? 10:56

9 A. Yes. 10:56

10 Q. Is that still an entity? 10:56

11 A. I forgot to pay the franchise tax, 10:56

12 and it went away. 10:56

13 Q. So it's no longer an entity that you 10:56

14 use? 10:57

15 A. No longer works. 10:57

16 Q. When it was in operation, what was 10:57

17 the business of that company? 10:57

18 A. Primarily, the same thing that 10:57

19 Calello Music Group does. 10:57

20 Q. So it was basically a lot of overlap 10:57

21 between those? 10:57

22 A. Yes, yeah. 10:57

23 Q. Other than the companies you 10:57

24 discussed so far, are there any other business 10:57

25 entities that you were an owner or principal of? 10:57

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1	Calello	
2	A. No, I don't think -- I don't think	10:57
3	so.	10:57
4	Q. Do you have a website?	10:57
5	A. Yes.	10:57
6	Q. Is that charlescalello.com?	10:57
7	A. Yes.	10:57
8	Q. Do you want to go ahead and do	10:57
9	Tab 4?	10:57
10	So we will mark this as Calello	10:57
11	Exhibit 1.	10:57
12	(Exhibit 1, photo, marked for	10:57
13	identification, as of this date.)	10:57
14	Q. Do you recognize this photo?	10:58
15	A. Yes.	10:58
16	Q. And I can represent we printed this	10:58
17	from charlescalello.com.	10:58
18	Does that sound correct to you?	10:58
19	A. Yes.	10:58
20	Q. And is Sandy Linzer in this	10:58
21	photograph?	10:58
22	A. No.	10:58
23	Q. Who is in this photograph?	10:58
24	A. Frankie Valli, Bob Gaudio, myself,	10:58
25	Artie Schroeck. There is Will Lee. There is	10:58

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1 Calello

2 Jeff Mirinoff, Drew Cracken (phonetic). 10:58

3 These are the musicians that played 10:58

4 on a record I did with Frankie Valli back in 10:58

5 2006, Romancing the '60s. 10:58

6 Q. Great. Thank you. 10:58

7 A. Gaudio produced it. I was the 10:59

8 arranger. 10:59

9 Q. Thank you. 10:59

10 Let's do Tab 5. 10:59

11 This will be Calello Exhibit 2. 10:59

12 (Exhibit 2, Complaint and Demand for 10:59

13 Jury Trial, marked for identification, as 10:59

14 of this date.) 10:59

15 Q. Do you recognize this document at 10:59

16 all? 10:59

17 A. No. 10:59

18 Q. Were you involved in the preparation 10:59

19 of this document at all? 10:59

20 A. I don't know what this document is. 10:59

21 Q. So it would be fair to say, to your 10:59

22 knowledge, you did not contribute anything to 10:59

23 this document? 11:00

24 A. No, I'm not saying that because I 11:00

25 haven't seen it. 11:00

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1 Calello

2 Give me a minute, I'll read it and I 11:00
3 can tell you. 11:00

4 Q. Oh, please take your time to review, 11:00
5 yes. 11:00

6 A. Off the top of my head, I would say 11:00
7 that this is not anything that I was associated 11:00
8 with. 11:00

9 Q. Okay. 11:00

10 If you look at the first page of 11:00
11 this document -- and, again, please let me -- if 11:00
12 you want more time to review it, please take all 11:00
13 the time you would like to review it. 11:00

14 A. Okay. Thank you. 11:00

15 Could I have a pencil, please? 11:00

16 Thank you. 11:00

17 MR. SANDS: You shouldn't write on 11:01
18 the document here. 11:02

19 A. I want to remember certain things. 11:02

20 If I may, could I have a copy I 11:02
21 could mark? 11:02

22 Q. You can have a copy you can mark. I 11:02
23 will say, we will keep a copy of that, so if it 11:02
24 is something you would not like us to see -- 11:02

25 A. No, it's -- you can say, I'm just 11:02

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1 Calello

2 they reference, which is the musical

11:04

3 illustration of notes.

11:04

4 Q. Okay. So do you -- let me first

11:04

5 ask, do you recognize the totality of the

11:04

6 document --

11:04

7 A. What do you mean --

11:04

8 Q. -- as something that you reviewed in

11:04

9 total before?

11:04

10 A. This is the first time I'm looking

11:04

11 at it.

11:04

12 Q. This is the first time you are

11:05

13 reviewing this particular document, is that

11:05

14 correct, to my understanding?

11:05

15 A. You are asking me the same question

11:05

16 sideways. Now, which way do you want it

11:05

17 answered?

11:05

18 Q. I'm asking if you have seen this

11:05

19 full document before?

11:05

20 A. No. I stated from the beginning, I

11:05

21 never saw that.

11:05

22 Q. Okay. Just trying to make sure we

11:05

23 have a clear record. Thank you though.

11:05

24 And then you noted just now that

11:05

25 there is something in the document that you do

11:05

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1 Calello

2 recognize, is that correct? 11:05

3 A. These illustrations, this piece of 11:05
4 music right here, it looks like it is four bars 11:05
5 of it, of music. 11:05

6 And then I also noticed this other 11:05
7 little piece on page 8, which makes reference to 11:05
8 my original document that I wrote in 2021. 11:05

9 Q. So I'm going to back up and take 11:05
10 this piece by piece for purposes of a clear 11:05
11 record, is that okay? 11:05

12 A. Okay. 11:05

13 Q. So let's first refer to page 7. 11:05

14 And you stated that there is a 11:05
15 portion of this page that you do recognize, 11:06
16 correct? 11:06

17 A. Um-hm. 11:06

18 Q. And the portion that you recognize 11:06
19 is the musical transcription on this page? 11:06

20 A. Yes. 11:06

21 Q. And where do you recognize this 11:06
22 from? 11:06

23 A. It's from my original report that I 11:06
24 wrote in 2021, and I believe it was also 11:06
25 utilized again in the -- one of the letters that 11:06

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1 Calello

2 I answered for Jason Brown that was sent -- it's 11:06
3 not part of the November 1, but it is in one of 11:06
4 the letters where I referred to -- I believe. 11:06

5 Now, I would have to see these 11:06
6 documents because -- to refresh my memory as to 11:06
7 where they are, but I could tell you that this 11:06
8 was created by me. This was created by me -- 11:06

9 Q. Just, if you don't mind, just so we 11:06
10 have a clear record, because referring to things 11:06
11 like "this" doesn't really show up on the 11:06
12 record -- 11:06

13 A. Okay. 11:06

14 Q. -- if you understand. 11:06

15 So when you said, "This was created 11:06
16 by me," the first thing you are referring to is 11:07
17 the musical transcription on page 7, is that 11:07
18 correct? 11:07

19 A. Yes. 11:07

20 Q. And -- 11:07

21 A. So I would say that number 37 on 11:07
22 page 6 looks like it came from me. And I'm not 11:07
23 sure if 38 came from me -- if number 38 came 11:07
24 from me. That might have been -- 11:07

25 Q. Do you mean the words in 11:07

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1 Calello

2 paragraph 38?

11:07

3 A. The word -- I'm not sure. I would
4 really have to check my original documents.

11:07

5 Q. Okay. And the musical transcription
6 at paragraph 37, that was prepared by you, is
7 that correct?

11:07

11:07

8 A. Yes.

11:07

9 Q. And that was prepared by you in
10 connection with the initial report you had
11 prepared in 2021, is that correct?

11:07

11:07

12 A. Yes.

11:07

13 Q. Turning to page 8, there is another
14 musical transcription at paragraph 41, is that
15 correct?

11:07

11:08

11:08

16 A. Correct.

11:08

17 Q. And you also recognize this
18 transcription, correct?

11:08

11:08

19 A. Yes.

11:08

20 Q. And did you prepare this
21 transcription?

11:08

11:08

22 A. Well, yes.

11:08

23 Q. Did you prepare that transcription
24 in connection with your initial 2021 report?

11:08

11:08

25 A. Yes.

11:08

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LARBALL PUBLISHING Co. vs DUA LIPA

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1	Calello	
2	Q. Is there anything else in this	11:08
3	document that you recognize?	11:08
4	A. No.	11:09
5	Q. Great.	11:09
6	MR. MULLINS: Will this be a good	11:09
7	time to take a ten-minute break, if that's	11:09
8	okay with everybody?	11:09
9	MR. SANDS: Sure. Thank you.	11:09
10	THE VIDEOGRAPHER: We are now going	11:09
11	off the record. The time is 11:09 a.m.	11:09
12	(Recess.)	11:31
13	THE VIDEOGRAPHER: We are back on	11:31
14	the record. The time is 11:31 a.m. This	11:31
15	is the beginning of media labeled number	11:31
16	2.	11:31
17	BY MR. MULLINS:	11:31
18	Q. Thank you.	11:31
19	Are you familiar with the entity	11:31
20	Larball Publishing Company, Inc.?	11:31
21	A. Yes.	11:32
22	Q. And is that company associated with	11:32
23	Mr. Brown?	11:32
24	A. I believe so.	11:32
25	Q. Are you familiar with Linzer	11:32

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1	Calello	
2	Productions, Inc.?	11:32
3	A. Yes.	11:32
4	Q. And is that company associated with	11:32
5	Mr. Linzer?	11:32
6	A. Yes.	11:32
7	Q. And we have confirmed that you	11:32
8	personally know of Mr. Linzer, correct?	11:32
9	A. Yes.	11:32
10	Q. And you know Mr. Linzer for quite a	11:32
11	long time, right?	11:32
12	A. Yes.	11:32
13	Q. Do you know roughly how long?	11:32
14	A. Since 1963.	11:32
15	Q. And do you know Mr. Brown personally	11:32
16	as well?	11:32
17	A. Yes.	11:32
18	Q. How long have you known Mr. Brown?	11:32
19	A. Since around 1964 -- '65.	11:32
20	Q. Are you familiar with Cory Daye?	11:32
21	A. Yes.	11:32
22	Q. Have you worked with Cory Daye	11:32
23	before?	11:33
24	A. Yes.	11:33
25	Q. And when was that roughly?	11:33

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1 Calello

2 A. Sandy did a record called the 11:33
3 "Savannah Band," and I wrote the arrangements to 11:33
4 the album. 11:33

5 Q. Do you know roughly when that was? 11:33

6 A. '78. It was a million seller and a 11:33
7 platinum album. 11:33

8 Q. And so you have worked with both 11:33
9 Mr. Linzer and Mr. Brown, is that correct? 11:33

10 A. Yes. 11:33

11 Q. How often have you worked with 11:33
12 Mr. Linzer, we will start with? 11:33

13 A. I worked with him extensively up 11:33
14 until 1980, and the same with Mr. Brown. 11:33

15 Then after 1980, we didn't work 11:33
16 together until about five years ago, we did a -- 11:33
17 I did a project with Mr. Linzer. We did a spec 11:33
18 project that we worked on for five songs. 11:34

19 But other than that, we haven't 11:34
20 really worked together. 11:34

21 Q. Was there any particular reason you 11:34
22 stopped working together after the '80s? 11:34

23 A. I moved from New York to California. 11:34
24 I was in California. Sandy remained in New 11:34
25 Jersey. And he came to Florida once to work on 11:34

25	couple of times a year.	11:35
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1 Calello

2 Q. And Mr. Linzer lives near you, is 11:35
3 that correct? 11:35

4 A. He lives in Livingston, New Jersey. 11:35
5 I live in Boca Raton, Florida. 11:35

6 Q. Okay. Does he have a home in 11:35
7 Florida? 11:35

8 A. He has a place, but he hasn't 11:36
9 been -- his wife has been very sick and he 11:36
10 hasn't been there for four or five years. 11:36

11 Q. Okay. You mentioned working on the 11:36
12 Savannah Band album, correct? 11:36

13 A. Yes. 11:36

14 Q. Did you also work on a solo album 11:36
15 for Cory Daye? 11:36

16 A. No. 11:36

17 Q. Are you familiar with her solo album 11:36
18 from 1979? 11:36

19 A. I heard some cuts from it. 11:36

20 Q. Are you represented by counsel here 11:36
21 today? 11:36

22 A. I don't understand that. I don't 11:36
23 think they are representing me. 11:36

24 Q. Okay. You understand the counsel 11:36
25 here to represent Mr. Linzer and Mr. Brown's 11:36

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1 Calello

2 companies, is that correct? 11:36

3 A. Yes. 11:36

4 Q. When you were retained -- take that 11:37

5 back. 11:37

6 So we spoke a bit briefly earlier 11:37

7 about you being approached by Mr. Linzer to 11:37

8 potentially give an opinion in connection with 11:37

9 this lawsuit, right? 11:37

10 A. Correct. 11:37

11 Q. Were all of your discussion 11:37

12 regarding this lawsuit with Mr. Linzer directly? 11:37

13 A. All the conversations I had with 11:37

14 Mr. Linzer, I did have with Mr. Linzer. 11:37

15 Q. Let me ask it differently. 11:37

16 Did you have discussions regarding 11:37

17 your opinions in this matter with anyone other 11:37

18 than Mr. Linzer? 11:37

19 A. Mr. Brown. 11:37

20 Q. Mr. Brown. 11:37

21 Other than Mr. Brown and Mr. Linzer, 11:37

22 did you have discussions with anyone regarding 11:37

23 your opinions? 11:37

24 A. Probably, my wife. 11:37

25 Q. Do you recall when you communicated 11:37

1 Calello

2 with Mr. Linzer or Mr. Brown regarding your 11:37
3 opinions in this matter, did you communicate via 11:37
4 email, phone, text? 11:38

5 MR. SANDS: Objection to form. 11:38

6 Q. You can answer. 11:38

7 A. Phone. I communicate with Sandy on 11:38
8 a regular basis by phone. We text. We have 11:38
9 emails together. And I -- I guess -- that would 11:38
10 be, I guess, a yes. 11:38

11 Q. Do you recall sharing drafts of any 11:38
12 of your opinions with Mr. Linzer or Mr. Brown? 11:38

13 A. When I finished the consulting 11:38
14 agreement -- not agreement but the paper that I 11:38
15 wrote, I sent it to him and I said, Look, I've 11:38
16 never written one of these before. Take a look 11:38
17 at this, you know I'm a horrible speller, see if 11:39
18 I spelled all the words right. 11:39

19 And he went through it and he said, 11:39
20 You spelled this wrong, and he corrected my 11:39
21 spelling. 11:39

22 Q. And when you are referring to the 11:39
23 consulting report, we will call it, that's the 11:39
24 report you mentioned from 2021, is that correct? 11:39

25 A. Yes. 11:39

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1 Calello

2 Q. And that is not the report that was 11:39
3 submitted in November of 2022 for this lawsuit, 11:39
4 is that correct? 11:39

5 A. Yes. 11:39

6 Q. Different reports, correct? 11:39

7 A. Right. 11:39

8 Q. And the lawsuit that -- 11:39

9 A. They -- they are not -- they are not 11:39
10 different because I wrote both of them. There 11:39
11 is -- not all the information from the first 11:39
12 report is in the second report. 11:39

13 Q. So the second report from November 11:39
14 of 2023 -- my apologies -- is the only report 11:39
15 that was formally submitted in this lawsuit, is 11:39
16 that your understanding? 11:39

17 A. Yes. 11:39

18 Q. When you were retained, did you sign 11:39
19 a formal agreement, a retainer agreement, 11:39
20 engagement agreement with anybody? 11:40

21 A. No. 11:40

22 Q. Was there any discussion about how 11:40
23 much you would be compensated, if at all? 11:40

24 A. They offered to pay me. 11:40

25 Q. "They" being Mr. Linzer and 11:40

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1	Calello	
2	Mr. Brown?	11:40
3	A. Yeah, for me to do it.	11:40
4	Q. And did you accept that offer?	11:40
5	A. Sure.	11:40
6	Q. Do you know how much you have been	11:40
7	paid?	11:40
8	A. 1,200 dollars.	11:40
9	Q. Was that an hourly basis or a flat	11:40
10	fee?	11:40
11	A. I charged them a minimum day rate.	11:40
12	Q. What would that rate be?	11:40
13	A. Well, my minimum day rate is 1,200	11:40
14	for 4 hours, but it took a lot longer than that.	11:40
15	Q. I was just going to ask, do you	11:41
16	recall how long you spent preparing the report	11:41
17	you submitted in November of 2023?	11:41
18	A. No, I don't remember. Maybe a	11:41
19	couple of days.	11:41
20	Q. If Mr. Linzer and Mr. Brown were	11:41
21	hypothetically to prevail in this lawsuit and	11:41
22	receive a financial award, would you be entitled	11:41
23	to any portion of that?	11:41
24	A. No.	11:41
25	Q. Have you published anything in the	11:41

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1	Calello	
2	last ten years?	11:41
3	A. Other than songs?	11:41
4	Q. Other than songs.	11:41
5	A. Yes.	11:41
6	Q. And what have you published?	11:41
7	A. A book.	11:41
8	Q. And is that your memoir, is that	11:41
9	correct?	11:41
10	A. Yes.	11:41
11	Q. Titled "Another Season - The Memoirs	11:41
12	of Charlie Calello"?	11:41
13	A. Yes.	11:41
14	Q. Other than that book and other than	11:41
15	music, have you published anything else since	11:41
16	2013?	11:41
17	A. No.	11:41
18	Q. No papers or articles in a	11:41
19	peer-reviewed publication, is that correct?	11:42
20	MR. SANDS: Objection to form.	11:42
21	A. No.	11:42
22	Explain what you mean by that.	11:42
23	Q. Have you published any papers,	11:42
24	articles or anything similar in a peer-reviewed	11:42
25	publication?	11:42

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1 Calello

2 A. No. 11:42

3 Q. Have you published any written works 11:42
4 on musical theory? 11:42

5 A. No. 11:42

6 Q. Have you published any written works 11:42
7 regarding musical analysis? 11:42

8 A. No. 11:42

9 Q. Let's go ahead and we will mark -- 11:42
10 this will be Exhibit 3, I believe. 11:42

11 (Exhibit 3, Another Season - A 11:43
12 Jersey Boy's Journey with the Four Seasons 11:43
13 and Beyond - The Memoirs of Charlie 11:43
14 Calello, marked for identification, as of 11:43
15 this date.) 13:13

16 Q. And, Mr. Calello, is this the 11:43
17 memoirs that we referenced before? 11:43

18 A. Yes. 11:43

19 Q. And so you are familiar with this 11:43
20 book? 11:43

21 A. Somewhat. 11:43

22 Q. Were you the author of this book? 11:43

23 A. Yes, in conjunction with another 11:43
24 writer. 11:43

25 Q. And so was the other writer Tom 11:43

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1	Calello	
2	Austin?	11:43
3	A. Yes.	11:43
4	Q. To your knowledge, is everything in	11:43
5	this book true?	11:43
6	A. Yes.	11:43
7	Q. This book does not contain any	11:43
8	musical transcriptions, does it?	11:43
9	A. Yes.	11:43
10	Q. That's --	11:43
11	A. Back cover.	11:44
12	Q. Okay. Other than the back cover,	11:44
13	this book does not contain any musical	11:44
14	transcriptions, is that correct?	11:44
15	A. Correct.	11:44
16	Q. And this book does not contain any	11:44
17	musicological analysis, right?	11:44
18	A. No.	11:44
19	Q. No, that it does not, or --	11:44
20	A. Repeat the question, please?	11:44
21	Q. Does this book contain any	11:44
22	musicological analysis?	11:44
23	A. I would have to go through the book	11:44
24	to find out if I ever did that because musical	11:44
25	analysis could mean me reconstructing something	11:44

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1 Calello

2 on a record session, and I don't want to be 11:44

3 misleading in answering the question because 11:44

4 offhand, I could tell you I don't remember, but 11:44

5 I'm sure if I wrote about -- if I wrote about 11:44

6 sessions, there had to be some kind of reference 11:44

7 in there where there was some kind of 11:44

8 communication. 11:44

9 But I can't -- off the top of my 11:45

10 head, I can't recall where they would be. 11:45

11 Q. Okay. You recall earlier, we talked 11:45

12 about musicological. 11:45

13 Is that -- do you recall that? 11:45

14 A. Yes. 11:45

15 Q. So my question is whether you're 11:45

16 aware of any analysis using the theory of 11:45

17 musicological that would be in this book? 11:45

18 A. There is a portion in it where I 11:45

19 explain a little bit about the Schillinger 11:45

20 system, and the way I created the rhythm track 11:45

21 for The Name Game. 11:45

22 The Name Game is the record Shirley, 11:45

23 Shirley bo Birley Bonana fanna fo Firley. You 11:45

24 probably heard it or sang it when you were a 11:45

25 kid. 11:45

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1	Calello	
2	A. Um-hm.	11:46
3	Q. -- with the heading "Inspirations."	11:46
4	Do you see that section?	11:46
5	A. Yes.	11:46
6	Q. And then do you see that in this	11:46
7	list, Sandy Linzer is mentioned?	11:47
8	A. Right.	11:47
9	Q. And that's the Mr. Linzer we have	11:47
10	discussed --	11:47
11	A. Yes.	11:47
12	Q. -- is that correct?	11:47
13	This will be Calello Exhibit 4.	11:47
14	(Exhibit 4, photos, marked for	11:47
15	identification, as of this date.)	11:47
16	Q. Have you had a chance to review	11:48
17	this?	11:48
18	A. I saw page 1.	11:48
19	Q. And I'll be asking about the image	11:48
20	that's on each page.	11:48
21	A. Okay.	11:48
22	Q. Do you recognize what is depicted on	11:48
23	this page?	11:48
24	A. Yes.	11:48
25	Q. And that's a record of the song Dawn	11:48

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1 Calello

2 performed by the Four Seasons, correct? 11:48

3 A. Correct. 11:48

4 Q. And this song was recorded at the 11:48

5 end of 1963, roughly, is that correct? 11:48

6 A. Correct. 11:48

7 Q. And on the bottom of this record, 11:48

8 this states, Abbreviation for, arranged and 11:48

9 conducted by "Calello." 11:48

10 Do you see that? 11:48

11 A. Yes. 11:48

12 Q. And does that refer to yourself? 11:48

13 A. Yes. 11:48

14 Q. And just above that, this record 11:48

15 lists Sandy Linzer as one of the songwriters on 11:48

16 this record? 11:48

17 A. Yes. 11:48

18 Q. So if we can turn back to Exhibit 3 11:49

19 of the book, and turn to page 243, if you 11:49

20 would -- actually, 245 -- oh, 244. I'm sorry. 11:49

21 So on page 244, do you see there is 11:49

22 a paragraph regarding Sandy Linzer? 11:49

23 A. Yes. 11:49

24 Q. And this paragraph discusses 11:49

25 Mr. Linzer's career, is that correct? 11:49

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1 Calello

2 A. Correct. 11:49

3 Q. And this states that Mr. Linzer 11:49

4 started his own publishing company and continued 11:49

5 to write and produce records, is that correct? 11:50

6 A. Yes. 11:50

7 Q. And the last sentence of this 11:50

8 paragraph states, "He" -- referring to 11:50

9 Mr. Linzer -- "and Mr. Calello continue to make 11:50

10 music together." 11:50

11 A. Correct. 11:50

12 Q. And that's a true statement, 11:50

13 correct? 11:50

14 A. Yes. 11:50

15 Q. Can you now look at page 245? 11:50

16 A. Um-hm. 11:50

17 Q. And then on this page, there is a 11:50

18 tribute from Mr. Linzer, is that correct? 11:50

19 A. Correct. 11:50

20 Q. And the following page, 246, there 11:50

21 is a tribute from Mr. Brown, correct? 11:50

22 A. Correct. 11:50

23 Q. And on 248, there is a list of 11:50

24 songwriting credits. 11:50

25 Do you see that? 11:50

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1 Calello

2 A. Yes. 11:50

3 Q. And this is a list of songs you 11:50
4 received songwriting credit on during your 11:51
5 career, is that correct? 11:51

6 A. Yes. 11:51

7 Q. Is this a full list or a partial 11:51
8 list? 11:51

9 A. Partial. 11:51

10 Q. And how are these particular songs 11:51
11 selected? 11:51

12 A. These were only the hit records. 11:51
13 In fact, yeah -- yeah, okay. 11:51

14 Q. And is it fair to say a number of 11:51
15 the songs listed here also refer to either 11:51
16 Mr. Linzer or Mr. Brown? 11:51

17 MR. SANDS: Object to form. 11:51

18 A. I don't recall if I had any chart 11:51
19 records with Mr. Brown. 11:51

20 Q. So one of the songs listed is "A 11:51
21 Lover's Concerto," right? 11:51

22 A. Yes. 11:51

23 Q. And that involved Mr. Linzer, 11:51
24 correct? 11:51

25 A. Yes. 11:51

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1 Calello

2 Q. A song on the later portion of this 11:51

3 list is "Tie a Yellow Ribbon." 11:52

4 Do you see that? 11:52

5 A. Yes. 11:52

6 Q. And that song involved Mr. Brown? 11:52

7 A. Yes, but I didn't do that record. 11:52

8 Q. Why is this record listed on this 11:52

9 page? 11:52

10 A. I think this is a list of all the 11:52

11 songs that are listed in my book. So what I did 11:52

12 was I gave the songwriter credits. 11:52

13 Q. So these are not necessarily all 11:52

14 songs that you worked on, these are songs that 11:52

15 were referenced in your book? 11:52

16 A. The songs that I worked on are the 11:52

17 next page, the next page where you have a list 11:52

18 of songs. 11:52

19 Q. Do you know what page number that 11:52

20 is? Or is that 254? 11:52

21 A. 254. 11:52

22 Q. Understood. 11:52

23 Okay. So the list on pages 248 and 11:52

24 249 are songs referenced in your book but not 11:52

25 necessarily songs that you personally worked on? 11:52

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1 Calello

2 A. I mentioned Larry Brown in my book 11:53
3 when he bought my house. 11:53

4 Q. Okay. But, again, just so I can 11:53
5 have an answer to this question for a clear 11:53
6 record, the list of songs on pages 248 and 249, 11:53
7 those are songs referenced in your book -- 11:53

8 A. Yes. 11:53

9 Q. -- but they are not necessarily 11:53
10 songs that you worked on personally? 11:53

11 A. Yes. 11:53

12 Q. Okay. Great. 11:53

13 You have worked on songs with 11:53
14 Mr. Linzer though, correct? 11:53

15 A. Correct. 11:53

16 Q. Do you know how many songs you 11:53
17 worked on with him? 11:53

18 A. It's hard to say, but together, we 11:53
19 had -- four, five, six, seven -- seven singles 11:53
20 that were hit records. 11:53

21 Q. So you had seven singles that were 11:53
22 hit records that you worked on with Mr. Linzer, 11:53
23 correct? 11:53

24 A. Um-hm. 11:53

25 Q. And you also worked on songs that 11:54

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1 Calello

2 Q. And there's an image on this page. 11:55

3 Do you see that? 11:55

4 A. Yeah. 11:55

5 Q. And is that an image of yourself 11:55

6 with Mr. Linzer? 11:55

7 A. Yes. 11:55

8 Q. Do you recall when this photograph 11:55

9 was taken? 11:55

10 A. Late '70s. 11:55

11 Q. Have you and Mr. Linzer ever 11:56

12 registered copyrights as co-owners? 11:56

13 A. Yes. 11:56

14 Q. Do you recall when the last time 11:56

15 was? 11:56

16 A. It had to be five, six years ago. 11:56

17 Q. 2016, does that sound correct? 11:56

18 A. Could be. 11:56

19 Q. Why don't we go ahead and mark 11:56

20 Tab 14. 11:56

21 (Exhibit 5, public catalog 11:56

22 copyright, United States Copyright Office, 11:56

23 marked for identification, as of this 11:56

24 date.) 13:13

25 Q. Have you had a chance to review this 11:57

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1 Calello

2 document?

11:57

3 A. Yes.

11:57

4 Q. Are you familiar with this type of
5 document at all?

11:57

11:57

6 A. Not this particular type of
7 document, but I've seen copyright -- the forms
8 change, but this one, I'm not familiar with.

11:57

11:57

11:57

9 Q. Would you recognize this as a
10 copyright registration?

11:57

11:57

11 A. Yes.

11:57

12 Q. And you will see in this document,
13 there is an application title listed "Love of a
14 Lifetime, et al.," is that correct?

11:57

11:57

11:57

15 A. Yes.

11:58

16 Q. And what does that refer to?

11:58

17 A. A song that we wrote together.

11:58

18 Q. The love of a Lifetime is one song?

11:58

19 A. Yes.

11:58

20 Q. Great.

11:58

21 And this registration was for one
22 song or multiple songs?

11:58

11:58

23 A. It looks like it's for one.

11:58

24 Q. Do you see under "Application

11:58

25 Title," there is another line that just says,

11:58

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1	Calello	
2	"Title."	11:58
3	Do you see that?	11:58
4	A. Yes.	11:58
5	Q. And do you see it states, "Linzer,	11:58
6	Calello, songs to copyright."	11:58
7	Do you see that?	11:58
8	A. Yes.	11:58
9	Q. Do you know what that refers to?	11:58
10	A. I don't know. There were five songs	11:58
11	that we wrote together, and they were all copy	11:58
12	written at the same time.	11:58
13	So it may refer to that, but I'm not	11:58
14	sure.	11:58
15	Q. Okay. Were these -- were the songs	11:58
16	referenced in this registration recorded?	11:58
17	A. Yes.	11:58
18	Q. Have those recordings ever been	11:58
19	distributed?	11:58
20	A. No.	11:58
21	Q. Since 2016, have you written any	11:59
22	other songs with Mr. Linzer other than what's	11:59
23	referenced in this registration?	11:59
24	A. No.	11:59
25	Q. This will be Exhibit 6.	11:59

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1	Calello	
2	(Exhibit 6, public catalog	13:13
3	copyright, United States Copyright Office,	11:59
4	marked for identification, as of this	11:59
5	date.)	11:59
6	Q. Do you recognize this document as	11:59
7	another copyright registration?	11:59
8	A. Yes.	11:59
9	Q. And do you see there is a	11:59
10	registration number listed?	12:00
11	A. Yes.	12:00
12	Q. And that number is PA0000049877?	12:00
13	A. Correct.	12:00
14	Q. And this registration is for a song	12:00
15	titled "Rainy Day Boy." Is that correct?	12:00
16	A. Correct.	12:00
17	Q. And the authorship on application	12:00
18	towards the bottom states that the song was	12:00
19	written by yourself and Mr. Linzer, is that	12:00
20	correct?	12:00
21	A. Correct.	12:00
22	Q. And the song Rainy Day Boy was	12:00
23	performed by Cory Daye, is that correct?	12:00
24	A. Correct.	12:00
25	Q. Do you recall the album on which	12:00

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1	Calello	
2	this song appeared?	12:00
3	A. No, I don't.	12:00
4	Q. Do you see under the title, there is	12:00
5	a line that states "Appears in"?	12:00
6	Under the title "Rainy Day Boy"?	12:00
7	A. Yeah, okay, I see that.	12:01
8	Q. And do you see it refers to	12:01
9	something called "Cory and Me"?	12:01
10	A. Yes.	12:01
11	Q. Are you familiar with that as a	12:01
12	record album?	12:01
13	A. I don't remember.	12:01
14	Q. Does -- strike that.	12:01
15	In this registration, there is a	12:01
16	date of publication.	12:01
17	Do you see that?	12:01
18	A. Yes.	12:01
19	Q. And that states the day of	12:01
20	publication was July 25, 1979.	12:01
21	Do you see that?	12:01
22	A. Yes.	12:01
23	Q. Does that sound like the correct	12:01
24	date that the song Rainy Day Boy was released to	12:01
25	you?	12:01

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1 Calello

2 A. Yes. 12:01

3 Q. Do you know who currently owns the 12:02
4 musical composition to Rainy Day Boy? 12:02

5 A. No. But I see it listed here. 12:02

6 Q. Do you see a line stating "Copyright 12:02
7 Claimant"? 12:02

8 A. Yes. 12:02

9 Q. And the first entity listed is 12:02
10 Unichappell Music, Inc.? 12:02

11 A. Um-hm. 12:02

12 Q. Are you familiar with that entity? 12:02

13 A. Yes. 12:02

14 Q. Do you have any ownership interest 12:02
15 in that entity? 12:02

16 A. No. 12:02

17 Q. Next one is Featherbed Music. 12:02
18 Do you see that? 12:02

19 A. Yes. 12:02

20 Q. Are you familiar with that entity? 12:02

21 A. I don't remember. That might have 12:02
22 been Sandy's publishing, but I'm not sure. 12:02

23 Q. Okay. How about April Music, Inc., 12:02
24 are you familiar with that entity? 12:02

25 A. Yes. 12:02

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1	Calello	
2	Q. And what is that entity?	12:02
3	A. It's a publishing entity.	12:02
4	Q. Do you know who owns that entity?	12:02
5	A. Not currently.	12:03
6	Q. Do you know who owned it in 1979?	12:03
7	A. I believe it was CBS.	12:03
8	Q. And the last entity listed is	12:03
9	Calello Music.	12:03
10	Do you see that?	12:03
11	A. Yes.	12:03
12	Q. Would that have been your publishing	12:03
13	company?	12:03
14	A. Yes.	12:03
15	Q. Does Calello Music still have an	12:03
16	interest in Rainy Day Boy?	12:03
17	A. Yes.	12:03
18	Q. So to the extent that Rainy Day Boy	12:03
19	is sold or exploited, Calello Music would	12:03
20	receive income, is that correct?	12:03
21	A. Yes.	12:03
22	Q. Do you know if Rainy Day Boy is	12:03
23	available for streaming?	12:03
24	A. I have no idea.	12:03
25	Q. Do you know when the last time you	12:03

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1	Calello	
2	would have received income from Rainy Day Boy	12:03
3	would be?	12:03
4	A. I have no idea.	12:03
5	Q. Have you and Mr. Linzer ever owned	12:03
6	or operated any entities together?	12:03
7	A. I don't recall.	12:04
8	Q. Are you familiar with an entity	12:04
9	called "Linzer-Calello Enterprises, LLC"?	12:04
10	A. Oh, yes, yes, yes. Okay.	12:04
11	Q. And what is that entity?	12:04
12	A. In the early 2000, we produced a	12:04
13	series of films for -- what is the name -- what	12:04
14	was the name of the company?	12:04
15	We -- there was a DVD company that	12:04
16	hired us to do a -- three DVDs.	12:04
17	Q. Okay.	12:04
18	And you formed this entity for the	12:04
19	purpose of creating those DVDs?	12:04
20	A. Yeah, yeah.	12:04
21	Q. And what were those DVDs?	12:04
22	A. Ronnie Milsap, Lorrie Morgan, and	12:04
23	Juice Newton.	12:05
24	Q. And did you write music for those	12:05
25	DVDs?	12:05

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1 Calello

2 A. No. 12:05

3 Q. Were those DVDs all created? 12:05

4 A. They -- we recorded their live
5 shows. 12:05

6 Q. Okay. Were the DVDs that you
7 recorded of live shows distributed? 12:05

8 A. Yes. 12:05

9 Q. And did you receive income from
10 those DVDs? 12:05

11 A. They never recouped, I believe. 12:05

12 Q. Were you paid in advance at all? 12:05

13 A. Yes. 12:05

14 Q. How much was that advance? 12:05

15 A. Well, we were paid a fee to produce,
16 so we paid all the expenses. So I really don't
17 know -- I don't remember what we wound up
18 with -- 12:05

19 Q. Okay. 12:05

20 A. -- but we paid for the films, the
21 shooting of the film, the editing and all the
22 stuff that went about. 12:05

23 Q. Okay. Other than the three DVDs of
24 live performances you just mentioned, did
25 Linzer-Calello Enterprises, LLC have any other 12:06

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1	Calello	
2	business?	12:06
3	A. No.	12:06
4	Q. Is that LLC still in operation?	12:06
5	A. I don't believe so.	12:06
6	Q. And when were those DVDs finished?	12:06
7	A. 2002 or '3, 20 years ago.	12:06
8	Q. Had you also been involved in a line	12:06
9	of musical greeting cards?	12:06
10	A. I think Linzer may have -- this is	12:06
11	vague because I never met the people and I never	12:06
12	saw any of the cards.	12:06
13	I think he did make a deal for some	12:06
14	masters to be put in -- on greeting cards, but I	12:06
15	don't remember what the deal was. I just know	12:07
16	that -- I never remember getting paid on any of	12:07
17	it.	12:07
18	Q. Okay.	12:07
19	Were you involved in that process at	12:07
20	all?	12:07
21	A. No.	12:07
22	Q. Let's go ahead and mark Tab A.	12:07
23	This will be Exhibit 7.	12:07
24	(Exhibit 7, memo, dated November 1,	12:07
25	2023, marked for identification, as of	12:07

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1	Calello	
2	this date.)	12:07
3	Q. Do you recognize this document?	12:08
4	A. Yes.	12:08
5	Q. And is this the November 1, 2023	12:08
6	report that you've referenced earlier in this	12:08
7	deposition?	12:08
8	A. Yes.	12:08
9	Q. And this is the only report that you	12:08
10	formally submitted in connection with this	12:08
11	dispute, is that correct?	12:08
12	I'll strike that.	12:08
13	This is the only report that you	12:08
14	produced to defendants in this lawsuit, is that	12:08
15	correct?	12:08
16	MR. SANDS: Objection to form.	12:08
17	A. As a consultant, I provided two	12:08
18	others prior to this, one in 2021 and one in	12:08
19	2000 -- January of 2023.	12:08
20	Q. But to your knowledge, your	12:08
21	consulting reports were never provided to --	12:09
22	A. To my knowledge.	12:09
23	Q. The only report that you're aware	12:09
24	that has actually been presented to the	12:09
25	defendants is this November 1, 2023 report, is	12:09

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1	Calello	
2	that correct?	12:09
3	A. Yes.	12:09
4	Q. This report in front of you is four	12:09
5	pages, correct?	12:09
6	A. Yes.	12:09
7	Q. And on page 4, there is a signature.	12:09
8	Do you see that?	12:09
9	A. Um-hm.	12:09
10	Q. And is that your signature?	12:09
11	A. Yes.	12:09
12	Q. So to your knowledge, is this the	12:09
13	totality of the expert report that you've	12:09
14	submitted to defendants in connection with this	12:09
15	dispute?	12:09
16	A. Yes. There were -- then there was a	12:09
17	bunch of -- there were some attachments, but I	12:09
18	don't remember what they were.	12:09
19	Q. Other than attachments --	12:09
20	A. No, this is it.	12:09
21	Q. This is the entirety of the report,	12:09
22	right?	12:10
23	A. Yes.	12:10
24	Q. And this report contains all of the	12:10
25	analysis that you are formally submitting as an	12:10

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1 Calello

2 expert in this dispute, is that correct? 12:10

3 MR. SANDS: Objection to form. 12:10

4 A. It's not all of the analysis. 12:10

5 Q. Let me ask that differently. 12:10

6 I'll come back. 12:10

7 So when I refer to your report for 12:10

8 this dispute, would you understand that I am 12:10

9 referring to this November 1, 2023 report? 12:10

10 A. Um-hm. 12:10

11 Q. Okay. 12:10

12 You prepared this report, correct? 12:10

13 A. Correct. 12:10

14 Q. Did anyone assist you in preparing 12:10

15 this report? 12:10

16 A. No. 12:10

17 Q. And on the top of this report, it 12:10

18 states "Calello Music Group, Inc." 12:10

19 Do you see that? 12:10

20 A. Yes. 12:10

21 Q. Do you know why it states that? 12:10

22 A. This was my letterhead. 12:10

23 Q. But this report is not being 12:11

24 submitted on behalf of Calello Music Group, 12:11

25 Inc., is it? 12:11

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1	Calello	
2	A. No.	12:11
3	Q. This report is from you personally,	12:11
4	correct?	12:11
5	A. Yes.	12:11
6	Q. At the very beginning of your	12:11
7	report, there is a paragraph in bold.	12:11
8	Do you see that?	12:11
9	A. Yes.	12:11
10	Q. It states, "This document is being	12:11
11	prepared by Charlie Calello to demonstrate why	12:11
12	the musical composition Levitating infringes on	12:11
13	the musical compositions Wiggle and Giggle All	12:11
14	Night and its Spanish version Don Diablo."	12:11
15	Do you see that?	12:11
16	A. Yes.	12:11
17	Q. You said before that you are not a	12:11
18	lawyer, correct?	12:11
19	A. Correct.	12:11
20	Q. So is it your role to determine	12:12
21	whether one work infringes another work?	12:12
22	MR. SANDS: Objection to form.	12:12
23	A. As an arranger, when I make records,	12:12
24	there were at times people who would insert	12:12
25	pieces of music that I encouraged them not to	12:12

1 Calello

2 use because I thought it would infringe on a 12:12

3 copyright. 12:12

4 It's a word I use to basically prove 12:12

5 that there may be some liability here. And 12:12

6 although I'm not a lawyer, the word I'm using is 12:12

7 not from a legal aspect as much as it is from a 12:12

8 professional aspect. 12:12

9 Q. Okay. 12:12

10 On page 1 of your report, the fifth 12:12

11 paragraph starting with, "Any copyright 12:12

12 infringement claim." 12:12

13 Do you see that? 12:12

14 A. On what page is that? 12:12

15 Q. 1. 12:13

16 A. Okay. Yes. 12:13

17 Q. Can you read the first sentence of 12:13

18 that paragraph? 12:13

19 A. "In any copyright infringement 12:13

20 claim, the most important musicological areas to 12:13

21 examine and compare are the melody or pitch, the 12:13

22 rhythm elements, along with the lyrics and 12:13

23 structure. The pop music infringement may also 12:13

24 be determined by the way the song is performed." 12:13

25 Q. Okay. So on just the first 12:13

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1	Calello	
2	sentence, ending with "along with the lyrics and	12:13
3	structure."	12:13
4	Do you see that?	12:13
5	A. Yes.	12:13
6	Q. So would you agree that melody,	12:13
7	rhythmic elements, lyrics and structure are all	12:13
8	elements that are important to analyze in	12:13
9	comparing music?	12:13
10	MR. SANDS: Objection to form.	12:13
11	A. Repeat the question?	12:13
12	Q. Would you agree that melody,	12:13
13	rhythmic elements, lyrics and structure are all	12:13
14	elements that are important to consider in	12:14
15	comparing music?	12:14
16	A. Yes.	12:14
17	Q. So without comparing those four	12:14
18	elements, it would not be a comprehensive	12:14
19	analysis, is that correct?	12:14
20	MR. SANDS: Objection to form.	12:14
21	A. Say that again, please?	12:14
22	Q. So if you were to not compare each	12:14
23	of these four elements, would you consider the	12:14
24	analysis comprehensive?	12:14
25	A. No.	12:14

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1 Calello

2 Q. Are these the only four elements 12:14
3 that you believe need to be considered? 12:14

4 A. Well, there is also the performance, 12:14
5 so there are five elements. 12:14

6 Q. So other than melody, rhythmic 12:14
7 elements, lyrics, structure and performance, are 12:14
8 there any other elements you believe must be 12:14
9 considered in a musicological comparison? 12:15

10 A. No, not in my opinion. 12:15

11 Q. What about harmony? 12:15

12 A. Harmony is usually based on the 12:15
13 arrangement -- 12:15

14 Q. So you -- 12:15

15 A. -- and chords are utilized by -- to 12:15
16 define how the song is supposed to be performed. 12:15

17 Q. So in your opinion, harmony is not 12:15
18 an element that needs to be considered in 12:15
19 conducting a musicological analysis, is that 12:15
20 correct? 12:15

21 A. I'm not saying that here. 12:15

22 Q. Do you believe harmony is an element 12:15
23 that should be considered in conducting a 12:15
24 musicological analysis? 12:15

25 A. Harmony -- chord progressions, no, 12:15

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1 Calello

2 but harmony, yes. 12:16

3 Q. So you believe harmony should be 12:16

4 considered in conducting a musicological 12:16

5 analysis? 12:16

6 A. Well, you have to use chord 12:16

7 progressions to determine a key. 12:16

8 Q. Right now, I'm just asking, the 12:16

9 question is, when conducting musicological 12:16

10 analysis, do you believe harmony is an element 12:16

11 that should be considered? 12:16

12 A. Yes. 12:16

13 Q. Does your report contain any 12:16

14 analysis of harmony? 12:16

15 A. Yes. 12:16

16 Q. Where in your report would that be? 12:16

17 A. On page 2. 12:16

18 Q. And where on page 2 would that be? 12:16

19 A. Look at the first illustration. 12:16

20 Q. That is the musical transcriptions 12:16

21 you are referring to? 12:16

22 A. "Please note there are similarities 12:16

23 in the following melodies." 12:16

24 Do you see that? 12:16

25 Q. Correct. 12:16

1 Calello

2 A. Do you see those little letters 12:16

3 there at the top of the notes? Those are 12:16

4 chords. There is a D chord and an A chord. 12:17

5 Q. Okay. 12:17

6 A. Okay? 12:17

7 Now, look at the bottom 12:17

8 illustration, there is two sets of chords. The 12:17

9 top line that's in -- well, do you have a -- do 12:17

10 you have it in color? 12:17

11 Q. Yes. 12:17

12 A. Okay. The black notes denotes the 12:17

13 chords are indicated at the top, and at the 12:17

14 bottom, the red notes are determined the chords 12:17

15 on the bottom. 12:17

16 Q. Okay. Other than transcriptions, 12:17

17 does your report contain any analysis of 12:17

18 harmony? 12:17

19 MR. SANDS: Objection to form. 12:17

20 A. I don't remember. I mean, I -- you 12:17

21 would have to show me another example for me to 12:17

22 examine. 12:17

23 But based on this, I don't remember 12:17

24 if there was another -- I may have used that in 12:17

25 one of my earlier -- when I was consulting, I 12:17

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1 Calello

2 don't know. 12:18

3 Q. But to reiterate, the only report 12:18
4 that you're aware of that was presented to 12:18
5 defendants is this November 1, 2023 report -- 12:18

6 A. Yes, yes. 12:18

7 Q. -- correct? 12:18

8 So I'm only asking about this 12:18
9 report. Do you understand that? 12:18

10 A. Yes. 12:18

11 Q. Okay. And this report is four 12:18
12 pages, correct? 12:18

13 A. Yes. 12:18

14 Q. Would it be helpful to take the time 12:18
15 to review it to see if you could point me to any 12:18
16 analysis of harmony other than the 12:18
17 transcriptions? 12:18

18 A. No. 12:18

19 Q. So you do not believe there would be 12:18
20 any analysis of harmony other than the 12:18
21 transcriptions, is that correct? 12:18

22 A. Repeat that? 12:18

23 Q. You do not believe this report 12:18
24 contains any analysis of harmony other than the 12:18
25 transcriptions, is that correct? 12:18

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1 Calello

2 A. I don't understand -- I don't 12:18
3 understand the question. Because the chords are 12:18
4 written down here. 12:18

5 What is it -- what is it I'm 12:18
6 missing? 12:18

7 Q. Does this report contain any written 12:18
8 analysis of the harmony of Wiggles and Giggles, 12:19
9 Don Diablo, and Levitating? 12:19

10 A. You can see the chords on the top 12:19
11 and the chords on the bottom, so there is a 12:19
12 comparison. 12:19

13 Q. Other than the transcription, does 12:19
14 this report contain any written analysis of the 12:19
15 harmonies of Wiggle and Giggle, Don Diablo, and 12:19
16 Levitating? 12:19

17 A. This report? 12:19

18 Q. Correct. 12:19

19 A. Not that I see here. 12:19

20 Q. Thank you. 12:19

21 In conducting a musicological 12:19
22 analysis, do you also believe it is important to 12:19
23 analyze differences between the works at issue? 12:19

24 A. Yes. 12:19

25 Q. Does this report contain the 12:19

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1 Calello

2 analysis of the differences between the works at 12:19

3 issue? 12:19

4 A. Yes. 12:19

5 Q. Where would that be? 12:19

6 A. Again, look at the first example. 12:19

7 Q. Okay. 12:19

8 A. It shows Don Diablo in black, Wiggle 12:19

9 and Giggle in red. And it shows two bars. Then 12:20

10 it shows how the notes work. Then you take a 12:20

11 look at the second two bars, it shows you how 12:20

12 the notes work. 12:20

13 Q. So other than what's reflected in 12:20

14 the musical transcriptions, does this report 12:20

15 contain any analysis of differences between 12:20

16 Wiggles and Giggles, Don Diablo, and Levitating? 12:20

17 A. Yes. 12:20

18 Q. And where would that be? 12:20

19 A. Next page, page 3. 12:20

20 Q. Okay. And which portion of page 3? 12:20

21 A. Do you see the diagram at the 12:20

22 bottom? 12:20

23 Q. Okay. 12:20

24 A. It breaks down Wiggle and Giggle for 12:20

25 the first -- for the verse, and it shows in 12:20

1 Calello

2 yellow the similarities in the music. Then it 12:20

3 shows in green all the other musical elements 12:21

4 and how long they exist in green. 12:21

5 So you have four bars in yellow, 12:21

6 then an additional two bars in yellow, which 12:21

7 consist of six bars. Then you have a 12:21

8 pre-chorus, a chorus, a verse, rap, an interlude 12:21

9 that are four bars each. 12:21

10 And, also, there is a second piece 12:21

11 of music in bars five and six of the verse of 12:21

12 two bars that contain what we would call 12:21

13 "original music." However, bar 6 contains the 12:21

14 same rhythm pattern in Don Diablo, but I 12:21

15 excluded that for this conversation. 12:21

16 So there is 24 musical bars, and out 12:21

17 of those 24 musical bars, 6 of them are 12:21

18 similarities to Don Diablo. 12:21

19 Q. So is it your opinion that other 12:22

20 than those six bars, everything else in these 12:22

21 songs is different? 12:22

22 A. The markings in green are the 12:22

23 additional parts of the song. The parts that 12:22

24 are similar, again, are bars 1, 2, 3 and 4 and 12:22

25 bars 7 and 8. Those are the similarities. 12:22

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1 Calello

2 So what we are dealing with is we 12:22
3 are dealing with a verse, and out of the verse, 12:22
4 75 percent of the verse has enormous 12:22
5 similarities to Don Diablo. 12:22

6 Q. Let me ask this a different way. 12:22

7 This report does not identify any 12:22
8 similarities other than the six bars of the 12:22
9 verse you just referenced, is that correct? 12:22

10 A. This -- this document doesn't. 12:22

11 Q. Correct. Okay. 12:22

12 And other than -- on page 2, you 12:23
13 pointed to some transcriptions, correct? 12:23

14 A. Correct. 12:23

15 Q. And these are the only 12:23
16 transcriptions contained within your report, is 12:23
17 that correct? 12:23

18 A. I believe there was an attachment 12:23
19 that contained a -- the full version of what you 12:23
20 showed before in one of the documents, but I 12:23
21 can't remember. 12:23

22 Q. Does that attachment have a 12:23
23 reference to this report? 12:23

24 A. I'm not sure, but I remember -- I 12:24
25 remember seeing it in one of these, but for now, 12:24

1 Calello

2 I will put that on hold until maybe we come 12:24

3 across it again. 12:24

4 Q. On page 1, the paragraph above 12:24

5 "Melody." 12:24

6 Do you see that, that paragraph? 12:24

7 A. Yes. 12:24

8 Q. Do you see this paragraph states, 12:24

9 "Below, I've transcribed all relevant portions 12:24

10 of said pieces into notation (musical notes.)" 12:24

11 A. Where, in page 1? 12:24

12 Q. Page 1. 12:24

13 A. Okay. Yeah, I see. 12:24

14 Q. So I'll -- just for clarity, I'll 12:24

15 repeat. 12:24

16 Do you see the sentence that states, 12:24

17 "Below, I've transcribed all relevant portions 12:24

18 of said pieces into notation (musical notes.)"? 12:24

19 A. Correct. 12:24

20 Q. When it says, "said pieces," are you 12:24

21 referring to Wiggle and Giggle, Don Diablo, and 12:24

22 Levitating? 12:24

23 A. Yes. 12:24

24 Q. And the only transcriptions that 12:25

25 follow this paragraph are the transcriptions on 12:25

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1	Calello	
2	page 2, is that correct?	12:25
3	A. Correct.	12:25
4	Q. So the transcriptions on page 2	12:25
5	contain what you consider to be all of the	12:25
6	relevant portions for purposes of the musical	12:25
7	analysis you're conducting in this report?	12:25
8	A. Correct.	12:25
9	THE VIDEOGRAPHER: Excuse me.	12:25
10	(Pause.)	12:25
11	Q. And you prepared these	12:25
12	transcriptions?	12:25
13	A. Yes.	12:25
14	Q. How did you prepare these	12:25
15	transcriptions?	12:25
16	A. Listening to the records.	12:25
17	Q. Did you transcribe -- create these	12:25
18	transcriptions by hand?	12:25
19	A. Yes. They were entered into a	12:25
20	computer.	12:25
21	Q. So you used a software?	12:25
22	A. Software.	12:25
23	Q. Do you know which software that was?	12:25
24	A. Finale.	12:25
25	Q. I'm sorry, can you repeat that?	12:26

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1 Calello

2 A. Finale. 12:26

3 Q. Can you spell that for the record? 12:26

4 A. F-I-N-A-L-E. 12:26

5 Q. Do you know when you created these 12:26

6 transcriptions? 12:26

7 A. Back in 2021. 12:26

8 Q. Do you know if you shared these 12:26

9 transcriptions with Ms. Salani? 12:26

10 A. I don't believe so. 12:26

11 MR. MULLINS: This may be a good 12:26

12 time to break again. Do you want to do 12:26

13 lunch now or do you want to do a short 12:26

14 break? 12:26

15 We can actually go off the record. 12:26

16 THE VIDEOGRAPHER: We're now going 12:26

17 off the record. The time is 12:26 p.m., 12:26

18 and we are off the record. 12:26

19 (Luncheon recess.) 12:26

20 AFTERNOON SESSION 12:26

21 THE VIDEOGRAPHER: We are back on 13:52

22 the record. The time is 1:52 p.m. This 13:52

23 is the beginning of media labeled number 13:52

24 3. 13:52

25

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1	Calello	
2	BY MR. MULLINS:	13:52
3	Q. Thank you, Mr. Calello.	13:52
4	Are you still able to testify fully	13:52
5	and accurately today?	13:52
6	A. Yes.	13:52
7	Q. Okay. I want to refer you back to I	13:52
8	believe what's Exhibit 7.	13:52
9	So I'm just going to refer you back	13:52
10	to page 2 of the report.	13:52
11	And we were discussing the	13:52
12	transcriptions contained on page 2 earlier.	13:52
13	Do you recall that?	13:52
14	(Pause.)	13:52
15	THE VIDEOGRAPHER: We are now going	13:53
16	off the record. The time is 1:53 p.m.	13:53
17	(Recess)	13:53
18	THE VIDEOGRAPHER: We are back on	13:57
19	the record. The time is 1:57 p.m.	13:57
20	BY MR. MULLINS:	13:57
21	Q. Thank you.	13:57
22	So we were talking about the	13:57
23	transcriptions on page 2 of your report. Turn	13:57
24	back to those.	13:57
25	Just initially, these four pages of	13:57

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1 Calello

2 your report do not contain a direct comparison 13:57

3 comparing Wiggle and Giggle to Levitating, is 13:57

4 that correct? 13:57

5 A. That is correct. 13:57

6 Q. If you look at the second 13:57

7 transcription on page 2, which is a comparison 13:57

8 of Don Diablo to Levitating -- 13:57

9 A. Um-hm. 13:57

10 Q. -- do you see that transcription? 13:57

11 A. Yes. 13:57

12 Q. This transcription starts at bar 13:57

13 number 9, is that correct? 13:57

14 A. Yes. 13:57

15 Q. Is it your opinion that the verse of 13:57

16 Levitating starts at bar 10? 13:57

17 A. Do you have a lead sheet here? 13:58

18 Q. I don't believe we do. 13:58

19 Do you recall how you decided to 13:58

20 start this transcription at bar number 9? 13:58

21 A. Because of the original document 13:58

22 that's not here, which it was my Exhibit A, 13:58

23 which explained where it was, it's hard for me 13:58

24 to tell. 13:58

25 But basically, what bar 10 is, it's 13:58

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1 Calello

2 the start of the verse of Levitating and Don 13:58

3 Diablo. It eliminates the introduction and only 13:58

4 starts with the musical composition that's on 13:58

5 the lead sheet. 13:58

6 Q. So it's your testimony that both Don 13:58

7 Diablo and Levitating start the verse at bar 10? 13:58

8 A. On this example. 13:58

9 Q. In the actual recordings, does the 13:59

10 verse of Levitating start on bar 10? 13:59

11 A. I'd have to look at my original 13:59

12 transcript, which is one of the exhibits in the 13:59

13 other paper. 13:59

14 What this is, it's a start of where 13:59

15 the songs start from the lead sheet. The 13:59

16 published lead sheet of Levitating starts 13:59

17 actually on bar 2. There is a two-bar repeat 13:59

18 for the introduction, so in the lead sheet that 13:59

19 the publishers put out, it starts on bar 3. But 13:59

20 if you play the record, there is a longer 13:59

21 introduction. 13:59

22 So the most logical way to put this 13:59

23 together seeing that we are dealing with 13:59

24 different recordings is to line up the verses. 13:59

25 Q. So let me start with this. Your 13:59

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1 Calello

2 report doesn't reference any lead sheets,

13:59

3 correct?

13:59

4 A. Not this, but in the past, I

13:59

5 referenced the lead sheets.

14:00

6 Q. This November 21, 2023 report that

14:00

7 was submitted to defendants in this action does

14:00

8 not reference any lead sheets, correct?

14:00

9 A. No. But the lead sheet was given to

14:00

10 me in the last report that Ferrara put together.

14:00

11 So I have a copy of it.

14:00

12 Q. You do not rely on -- strike that.

14:00

13 Your November 21, 2023 report --

14:00

14 November 1, 2023 report --

14:00

15 A. Go ahead.

14:00

16 Q. -- does not state that you relied on

14:00

17 any lead sheets in forming your opinions, is

14:00

18 that correct?

14:00

19 A. Correct.

14:00

20 Q. Your November 1, 2023 report also

14:00

21 does not state that it relied on any

14:00

22 transcriptions other than what is in these four

14:00

23 pages of the report, is that correct?

14:00

24 MR. SANDS: Objection to form.

14:00

25 A. That's really not true because I did

14:00

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1 Calello

2 a full analysis and, unfortunately, it's not 14:01

3 here. But you are correct, and it doesn't 14:01

4 appear on these four pages. 14:01

5 Q. Correct. So any analysis you did 14:01

6 outside of -- well, let's strike that. 14:01

7 Let me go back to the 14:01

8 transcriptions, and we are talking about the bar 14:01

9 numbers. 14:01

10 So if I understood your testimony 14:01

11 correct, it is not your testimony that the 14:01

12 verses of Don Diablo and Levitating actually 14:01

13 start in the same bar in the recordings. Am I 14:01

14 understanding that correctly? 14:01

15 A. The verse -- verses start where the 14:01

16 verses start. 14:01

17 So in song form, when you make a 14:01

18 record, however they produce the record is 14:01

19 different than what the copyright of the song 14:01

20 is. 14:01

21 So here, I'm referring to the 14:01

22 copyrighting of the song, not the record. 14:01

23 The confusion is between the master 14:01

24 recording, which is one copyright, and the song, 14:02

25 which is another copyright. This is referring 14:02

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1 Calello

2 to the melody of the song, which the lead sheet 14:02

3 is written one way, and if you transcribe it 14:02

4 from the record, you actually produce this. 14:02

5 Q. So -- and you created the 14:02

6 transcription on page 2 of this report, is that 14:02

7 correct? 14:02

8 A. Yes. 14:02

9 Q. And when creating this 14:02

10 transcription, what did you use to determine 14:02

11 that the verse of Levitating began in bar 10? 14:02

12 A. I started at the verse, listened to 14:02

13 the verse and copied the notes off the record. 14:02

14 Q. So is it your testimony that the 14:02

15 composition of Levitating has nine bars in it 14:02

16 before the verse? 14:02

17 A. I would have to listen to the record 14:03

18 to confirm if I use that format because it's not 14:03

19 indicated here. 14:03

20 But understand that bar 10 is the 14:03

21 start of the verse. 14:03

22 Q. In -- 14:03

23 A. In Levitating and Don Diablo. It's 14:03

24 where it goes (indicating.) 14:03

25 Q. You can say musical... 14:03

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1 Calello

2 For -- so, again -- and I apologize, 14:03

3 I'm just trying to get a clear record here. 14:03

4 But it is your testimony that in 14:03

5 both Don Diablo and Levitating, it is your 14:03

6 opinion that the verse begins in bar 10 of each 14:03

7 respective song? 14:03

8 A. You're -- I can't say it -- I can't 14:03

9 say that's for sure because you would have to 14:03

10 play the record right now so we can count the 14:03

11 bars as to how I arrived at that. 14:03

12 But I will tell you, for this to 14:03

13 appear here, the -- for this to be bar 10 and we 14:04

14 eliminate 9 bars, the probability is as strong 14:04

15 that those 9 bars did not create -- did not have 14:04

16 any melodic passages in them until the verse 14:04

17 actually appeared in the record. 14:04

18 This is where the verse appears in 14:04

19 the record. 14:04

20 Q. Okay. 14:04

21 And the verse of each respective 14:04

22 record is the only portion that's transcribed 14:04

23 within the four pages of this report? 14:04

24 A. Correct. 14:04

25 Q. Let's mark Exhibit 8. 14:04

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1	Calello	
2	(Exhibit 8, document entitled	14:04
3	"Testimony Report for Copyright	14:04
4	Infringement" dated 10/27/2023, marked for	14:04
5	identification, as of this date.)	14:04
6	Q. Do you recognize this document,	14:05
7	Mr. Calello?	14:05
8	A. Yes.	14:05
9	Q. Have you seen this document before?	14:05
10	A. No.	14:05
11	Q. What do you recognize this document	14:05
12	to be?	14:05
13	A. I see Barbara Salani's name on it.	14:05
14	So...	14:05
15	Q. But it's your testimony you've never	14:05
16	seen this document before today?	14:05
17	A. No.	14:05
18	Q. I'll have you turn to page 3 of this	14:05
19	document.	14:05
20	And on page 3, towards the top, you	14:05
21	will see a transcription.	14:06
22	Do you see that?	14:06
23	A. Yes.	14:06
24	Q. I would like to put that	14:06
25	transcription on page 3 of Exhibit 8 side by	14:06

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1 Calello

2 side with the transcription on page 2 of 14:06

3 Exhibit 7, if you could do that. 14:06

4 A. Say that -- oh, okay. I understand. 14:06

5 Okay. 14:06

6 Q. And this would be the first 14:06

7 transcription on page 2 of Exhibit 7 comparing 14:06

8 Don Diablo to Wiggle and Giggle, correct? 14:06

9 A. Yes. 14:06

10 Q. Do these transcriptions appear to be 14:06

11 the same to you? 14:06

12 A. Exactly. 14:06

13 Q. Did you create the transcription on 14:06

14 page 3 of Exhibit 8? 14:06

15 A. It looks like a copy. 14:06

16 Q. The red notes in the transcription 14:06

17 on Exhibit 7, did you prepare those? 14:07

18 A. Yes. 14:07

19 Q. And those red notes are the same in 14:07

20 the transcription on page -- Exhibit 8 -- 14:07

21 A. Yes. 14:07

22 Q. -- is that correct? 14:07

23 How do you think that the 14:07

24 transcription in Exhibit 8 -- strike that. 14:07

25 Do you think it's possible that the 14:07

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1 Calello

2 transcription in Exhibit 8 on page 3 was just 14:07
3 coincidentally the same as the transcription on 14:07
4 page -- Exhibit 7? 14:07

5 A. No. It looks like it's a direct 14:07
6 copy. 14:07

7 Q. And, again, I believe you testified 14:07
8 the program you used to create the 14:07
9 transcriptions in Exhibit 7 was Finale -- 14:07

10 A. Yes. 14:07

11 Q. -- is that correct? 14:07

12 So let's turn to back to Exhibit 7 14:07
13 again. 14:08

14 And still on page 2, towards the 14:08
15 middle of the page, there is the statement, 14:08
16 "There are 23 notes in Wiggle and Giggle All 14:08
17 Night Long." 14:08

18 Do you see that? 14:08

19 A. Um-hm. Yes. 14:08

20 Q. What 23 notes are you referring to 14:08
21 in that statement? 14:08

22 A. Starting the second bar, the melody 14:08
23 of both songs moved in the exact same direction 14:08
24 except for the 8th note in bar 11, so I am 14:08
25 referring to the start of bar 10 and, also, bar 14:08

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1 Calello

2 11. 14:08

3 Q. Okay. So when you state, "There are 14:08

4 23 notes in Wiggle and Giggle All Night Long," 14:08

5 you were referring to the notes in bars 10 and 14:08

6 11 as transcribed on page 2 of your report? 14:08

7 A. Correct. 14:08

8 Q. And when you state, "There are 26 14:08

9 notes in Don Diablo," are you referring to bars 14:08

10 9, 10 and 11 as transcribed? 14:09

11 A. Yes. 14:09

12 Q. And when you state, "There are 23 14:09

13 notes in Levitating," are you referring to only 14:09

14 bars 10 and 11 as transcribed? 14:09

15 A. Correct. 14:09

16 Q. And when you state that "The melody 14:09

17 in both songs move in the exact same 14:09

18 direction" -- do you see that statement? 14:09

19 A. Where is that located? 14:09

20 Q. The middle of page 2, sentence 14:09

21 beginning, "Starting in the second bar." 14:09

22 A. Yes. 14:10

23 Q. So when you state that "The melody 14:10

24 in both songs move in the exact same direction," 14:10

25 the direction you are referring to is down, 14:10

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1	Calello	
2	correct?	14:10
3	A. Say that --	14:10
4	Q. The direction you are referring to	14:10
5	is down?	14:10
6	A. Yes.	14:10
7	Q. Okay. Also on page 2, you have a	14:10
8	section under the heading "Rhythm."	14:10
9	Do you see that?	14:10
10	A. Um-hm.	14:10
11	Q. And, again, this section states that	14:10
12	"In Wiggle and Giggle All Night Long, there are	14:10
13	a total 23 notes that make up the theme"?	14:10
14	A. Um-hm.	14:10
15	Q. Are you referring to the same 23	14:10
16	notes that are referenced earlier in the report?	14:10
17	A. Yes.	14:10
18	Q. And that's the same for Don Diablo,	14:10
19	correct?	14:10
20	A. Yes.	14:10
21	Q. And the same for Levitating,	14:10
22	correct?	14:10
23	A. Yes.	14:10
24	Q. Your report does not contain any	14:10
25	transcription of the rhythm of any of the songs,	14:10

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1 Calello

2 is that correct? 14:10

3 MR. SANDS: Objection to form. 14:11

4 A. It doesn't -- any other -- what was 14:11

5 that? 14:11

6 Q. Other than these -- strike that. 14:11

7 Your report does not contain any 14:11

8 transcriptions of the percussive elements of 14:11

9 these songs, do they? 14:11

10 A. No. That's -- they -- for some 14:11

11 reason, they're eliminated. 14:11

12 But in this document -- in this 14:11

13 document, there are none. 14:11

14 Q. And I'm asking, within the confines 14:11

15 of this November 1, 2023 four-page report, there 14:11

16 are no transcriptions of percussive elements, 14:11

17 correct? 14:11

18 A. Just let me check one thing. 14:11

19 No, there is mention on page 4. 14:11

20 Q. And my question is whether there is 14:11

21 a transcription? 14:11

22 A. No. 14:11

23 Q. And just to clarify, other than 14:11

24 yourself, did anyone else work on preparing this 14:12

25 November 1, 2023 report? 14:12

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1 Calello

2 A. No. 14:12

3 Q. Okay. So going back to page 1 of 14:12

4 the report, do you see there is a bolded word 14:12

5 "Melody" followed by a colon -- 14:13

6 A. Yes -- 14:13

7 Q. -- at the bottom of the report? 14:13

8 A. -- yes. 14:13

9 Q. And then there is a paragraph 14:13
10 following that, is that correct? 14:13

11 A. Um-hm. Yes. 14:13

12 Q. Did you draft this paragraph 14:13
13 following "Melody" on page 1 of your report? 14:13

14 A. This is a definition of "melody," 14:13
15 and I may have taken it from the Harvard 14:13
16 dictionary, but I don't recall. 14:13

17 But this actually explains it quite 14:13
18 nicely. 14:13

19 Q. This will be Exhibit 9, I believe. 14:14

20 (Exhibit 9, Wikipedia definitions, 14:14
21 marked for identification, as of this 14:14
22 date.) 14:14

23 Q. Mr. Calello, are you familiar with 14:14
24 the website Wikipedia? 14:14

25 A. Yes. 14:14

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1 Calello

2 Q. Do you consider Wikipedia to be a 14:14
3 reliable source for information? 14:14

4 A. Sometimes. 14:14

5 Q. On the first page of this exhibit, 14:14
6 you will see there is a definition of "melody." 14:15

7 Do you see that? 14:15

8 A. Yes. 14:15

9 Q. And you will see that this 14:15
10 definition largely matches the definition 14:15
11 contained in your report. 14:15

12 Do you see that? 14:15

13 A. Yes. 14:15

14 Q. Does this refresh your recollection 14:15
15 of where you obtained the definition contained 14:15
16 in your report? 14:15

17 A. Could be. But I don't -- I -- I did 14:15
18 research. So it could be. 14:15

19 Q. So it's possible this -- the 14:15
20 definition in your report may have come from 14:15
21 Wikipedia, but you don't recall for sure? 14:15

22 A. Can't recall. 14:15

23 Q. Do you recall using Wikipedia in the 14:15
24 process of researching the opinions in your 14:15
25 report? 14:15

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1 Calello

2 A. To define certain things, I would 14:15

3 refer to researching them on the internet, yes. 14:15

4 Q. And there are a number of 14:16

5 definitions in your report, correct? 14:16

6 A. Um-hm. 14:16

7 Q. Including definitions for "pitch" on 14:16

8 page 2, is that correct? 14:16

9 A. Um-hm. Yes. 14:16

10 Q. Do you recall where the definition 14:16

11 for "pitch" contained on page 2 of your report 14:16

12 came from? 14:16

13 A. No. 14:16

14 Q. I'll refer you to page 5 of 14:16

15 Exhibit 9. 14:16

16 A. Um-hm. 14:16

17 Q. And you will see that this is 14:16

18 another Wikipedia page for "Pitch (music)"? 14:16

19 A. Correct. 14:16

20 Q. And you see there is a definition in 14:16

21 the first paragraph on this page of "pitch"? 14:16

22 A. Yes. 14:16

23 Q. And do you see that the definition 14:16

24 in Wikipedia matches the definition contained on 14:16

25 page 2 of your report? 14:16

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1 Calello

2 A. Yes. 14:16

3 Q. And for the record, the highlights 14:16
4 in this Wikipedia document were added by our 14:17
5 firm, not Wikipedia itself, but for illustration 14:17
6 purposes. 14:17

7 Page 2 of your report also contains 14:17
8 a definition of "rhythm," correct? 14:17

9 A. Correct. 14:17

10 Q. Do you recall where you obtained 14:17
11 that definition from? 14:17

12 A. No. 14:17

13 Q. I'll refer you to page 14 of 14:17
14 Exhibit 9. 14:17

15 A. Yes. 14:17

16 Q. Does this page look familiar to you 14:17
17 at all? 14:17

18 A. I don't recall. 14:17

19 Q. Do you see that page 14 toward the 14:17
20 top indicates that this is a printout from 14:18
21 Facebook? 14:18

22 A. Say that again, please? 14:18

23 Q. Do you see at the top of page 14 -- 14:18

24 A. Top? Yes. 14:18

25 Q. -- there is a heading, small font, 14:18

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1 Calello

2 stating "Facebook," and below that is the 14:18

3 Facebook logo. 14:18

4 Do you see that? 14:18

5 A. Yes. 14:18

6 Q. Are you familiar with a Facebook 14:18

7 account called "Minds on Music"? 14:18

8 A. Not really. 14:18

9 Q. Do you recall whether you referenced 14:18

10 Facebook in researching your -- the opinions in 14:18

11 your report? 14:18

12 A. I don't use Facebook. There is a 14:18

13 girl who works for me that does that, but I 14:18

14 don't know how to work it. 14:18

15 Q. And who is that? 14:18

16 A. Darian R. Davis -- Davies. 14:18

17 Q. And Darian is an employee of yours? 14:18

18 A. Part-time employee. 14:19

19 Q. Did Darian assist you in researching 14:19

20 or preparing the opinions in your report? 14:19

21 A. No. 14:19

22 Q. Going back to page 2 of your report, 14:19

23 there is a definition of "lyrics" at the 14:19

24 beginning. 14:19

25 Do you see that? 14:19

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1 Calello

2 A. Let's see. Yes. 14:19

3 Q. And then I'll refer you to page 15 14:19
4 of Exhibit 9. 14:19

5 Do you see that this is a Wikipedia 14:19
6 page for lyrics? 14:19

7 A. Um-hm. 14:19

8 Q. And do you see that statements from 14:19
9 page 15, Wikipedia page, are equivalent to the 14:19
10 definition on pages 2 and 3 of your report for 14:19
11 lyrics? 14:19

12 A. Yes. 14:19

13 Q. And do you recall whether you 14:19
14 obtained the definition in your report from 14:19
15 Wikipedia? 14:19

16 A. I don't recall. 14:20

17 But it's... 14:20

18 Q. Still in page 3 of your report in 14:20
19 the "Lyric" section, there is a bolded sentence 14:20
20 stating, "The meter and symmetry of expression 14:20
21 are the same as Wiggle and Giggle All Night Long 14:20
22 and Don Diablo." 14:20

23 Do you see that? 14:20

24 A. Yes. 14:20

25 Q. What do you mean by "symmetry of 14:20

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1 Calello

2 expression"?

14:20

3 A. The symmetry of expression is the
4 way the lyrics compound against the beat.

14:20

5 Q. Okay.

14:20

6 Also on page 3, you see a definition
7 for "structure," is that correct?

14:20

8 A. Correct.

14:20

9 Q. And I'll refer you to page 20 of
10 Exhibit 9.

14:20

11 A. Um-hm.

14:20

12 Q. And do you see that page 20 of
13 Exhibit 9 is a Wikipedia page for structure?

14:20

14:21

14 A. Um-hm.

14:21

15 Q. And do you see that the definition
16 provided on the Wikipedia page for "structure"
17 matches the definition provided on page 3 of
18 your report?

14:21

14:21

14:21

14:21

19 A. Yes.

14:21

20 Q. And then also on page 3, there is a
21 definition for "performance" at the bottom of
22 the page.

14:21

14:21

14:21

23 Do you see that?

14:21

24 A. Yes.

14:21

25 Q. And then I'll refer you to page --

14:21

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1 Calello

2 A. Yes, go ahead. 14:21

3 Q. I'll refer you back to page 26 of 14:21

4 Exhibit 9. 14:21

5 A. Um-hm. 14:21

6 Q. You will see that Exhibit -- or 14:22

7 page 26 of Exhibit 9 is a Wikipedia page for 14:22

8 performance. 14:22

9 Do you see that? 14:22

10 A. Um-hm. Yes. 14:22

11 Q. And do you see that the highlighted 14:22

12 portion of the Wikipedia page on page 26 matches 14:22

13 the definition provided in your report for 14:22

14 "performance"? 14:22

15 A. Yes. 14:22

16 Q. And then on page 4 of your report, 14:22

17 there is a definition for "tempo," correct? 14:22

18 A. Correct. 14:22

19 Q. And I'll refer you to page 32 of 14:22

20 Exhibit 9. 14:22

21 A. Yes. 14:22

22 Q. And you will see that page 32 of 14:22

23 Exhibit 9 is a Wikipedia page for tempo, is that 14:22

24 correct? 14:22

25 A. Yes, yes. 14:22

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1 Calello

2 Q. And would you agree that the 14:22
3 highlighted portion of page 32 of Exhibit 9 14:22
4 matches a definition of "tempo" provided in your 14:22
5 report? 14:23

6 A. Yes. 14:23

7 Q. And then the last one on page 4 of 14:23
8 your report, there is also a definition for 14:23
9 "beat," is that correct? 14:23

10 A. Correct. 14:23

11 Q. And I will refer you to page 45 in 14:23
12 Exhibit 9. 14:23

13 Do you recognize page 45 to be a 14:23
14 Wikipedia page for beat? 14:23

15 A. Yes. 14:23

16 Q. And would you agree that the 14:23
17 highlighted portion of page 45 matches the 14:23
18 definition of "beat" provided in your report? 14:23

19 A. Yes. 14:23

20 Q. And also on page 45, on the right 14:23
21 side of the page, do you see that there is an 14:23
22 illustration of notes? 14:24

23 A. Correct. I see it. 14:24

24 Q. And at the top of that illustration 14:24
25 are 16 notes, correct? 14:24

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1 Calello

2 A. Correct. 14:24

3 Q. Do you agree with this, that 16th 14:24
4 notes are one of the division levels of beats? 14:24

5 A. Yes. 14:24

6 Q. Okay. Let's go back to your report, 14:24
7 Exhibit 7. 14:24

8 You are not a statistician, correct? 14:25

9 A. Say that again? 14:25

10 Q. You are not a statistician, correct? 14:25

11 A. A -- I don't know what that means. 14:25

12 Q. Have you had any formal training in 14:25
13 statistics? 14:25

14 A. No. 14:25

15 Q. Do you consider yourself an expert 14:25
16 in statistics? 14:25

17 A. No. 14:25

18 Q. Do you consider yourself an expert 14:25
19 in probability? 14:25

20 A. It's a vague question. I don't know 14:25
21 if I could find a reasonable answer to that. 14:25

22 Q. Would you consider yourself an 14:25
23 expert in the mathematical calculation of 14:25

24 probability? 14:25

25 A. Yes. 14:25

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1 Calello

2 Q. On what basis? 14:25

3 A. Studying Schillinger. 14:25

4 Q. And how does Schillinger relate to 14:25
5 the mathematical calculation of probabilities? 14:26

6 A. Schillinger was based on 14:26
7 mathematics. 14:26

8 Q. Okay. Have you ever -- well, strike 14:26
9 that. 14:26

10 Other than Schillinger, have you had 14:26
11 any training in mathematics? 14:26

12 A. Only in school. 14:26

13 Q. And that would be -- 14:26

14 A. High school. 14:26

15 Q. -- high school level, correct? 14:26

16 A. Yeah. 14:26

17 Q. Would you agree that Levitating is 14:26
18 in the key B minor? 14:26

19 A. Yes. 14:26

20 Q. And specifically the B natural 14:26
21 minor? 14:26

22 A. What do you mean by B -- yes, B 14:26
23 natural minor. 14:26

24 Q. And how many pitches are there in a 14:26
25 scale of B natural minor? 14:26

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1	Calello	
2	A. B, C sharp, D, E, F sharp, G, A and	14:26
3	B.	14:26
4	Q. Do you know how many that was?	14:27
5	A. I just gave eight notes.	14:27
6	Q. So it's your testimony there is 8 --	14:27
7	A. Seven. There's seven pitches in the	14:27
8	octave.	14:27
9	Q. So there are seven pitches in B	14:27
10	natural minor, correct?	14:27
11	A. Yes.	14:27
12	Q. And then eight octaves?	14:27
13	A. Yes.	14:27
14	Q. And is that true of any major or	14:27
15	minor scale?	14:27
16	A. No. It's only -- the interval	14:27
17	structure of a minor scale is different than a	14:27
18	major scale.	14:27
19	Q. I guess my question is, the number	14:27
20	of pitches, seven --	14:27
21	A. Yeah.	14:27
22	Q. -- is that the same --	14:27
23	A. Yes.	14:27
24	Q. I'll just -- sorry --	14:27
25	A. Okay.	14:27

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1 Calello

2 Q. -- so we are not talking over each 14:27
3 other. 14:27

4 A. Oh, yeah. 14:27

5 Q. Is it correct that any minor or 14:27
6 major scale contains seven pitches? 14:27

7 A. Yes. 14:27

8 Q. And would you agree that Don Diablo 14:27
9 is a D major scale? 14:27

10 A. Is a what? 14:27

11 Q. A D major scale for Don Diablo? 14:28

12 A. C major scale, correct -- well, no, 14:28
13 hold on. Hold on one second. 14:28

14 I originally transcribed it, I 14:28
15 think, in B flat. And then I transposed it to 14:28
16 the key of D. 14:28

17 Q. Do you recall what is the original 14:28
18 key of Don Diablo? 14:28

19 A. I think it was B flat, if my memory 14:28
20 serves me. 14:28

21 Q. Okay. Would a B flat scale have 14:28
22 seven pitches as well? 14:28

23 A. Exactly, yes. 14:28

24 Q. Twelve pitches in sequence would 14:28
25 constitute a chromatic scale, is that correct? 14:28

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1 Calello

2 A. Yes. 14:28

3 Q. And none of the works discussed in 14:28
4 your report are in a chromatic scale, are there? 14:28

5 A. My original report from 2021 lays 14:28
6 out a diagram which explains intervals and a 14:29
7 chromatic scale. 14:29

8 Q. Again, to your knowledge, the report 14:29
9 you just referenced was never provided to the 14:29
10 defendants in this lawsuit, correct? 14:29

11 A. Yes, I understand that now. 14:29

12 Q. And, again, the only report that you 14:29
13 are familiar with that was presented to 14:29
14 defendants in this lawsuit is the November 1, 14:29
15 2023 report, correct? 14:29

16 A. Yes. 14:29

17 Q. And within the November 1, 2023 14:29
18 report, there is no discussion of any songs that 14:29
19 are in the chromatic scale, is that correct? 14:29

20 MR. SANDS: Objection to form. 14:29

21 A. No songs -- 14:29

22 Q. I'll strike that. I'll strike that. 14:29

23 A. -- that are in the chromatic form? 14:29

24 Q. I'll strike that. 14:29

25 Does Wiggle and Gigggle utilize a 14:29

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1 Calello

2 chromatic scale? 14:29

3 A. No. It uses -- the entire song? 14:29

4 I don't know, I would have to look. 14:29

5 I would have to look at the notes. 14:30

6 But in order for me to do that, I 14:30

7 need the music. 14:30

8 Q. Well, let me -- the -- on page 2 of 14:30

9 your report, you have transcriptions of the 14:30

10 verse -- 14:30

11 A. Right. 14:30

12 Q. -- of each -- of Don Diablo, Don 14:30

13 Diablo with Wiggle and Giggle and Levitating, 14:30

14 correct? 14:30

15 A. Okay, um-hm. 14:30

16 Q. Is any part of the transcriptions on 14:30

17 page 2 of your report in the chromatic scale? 14:30

18 A. No. 14:30

19 Q. Thank you. 14:30

20 A. It's all diatonic. 14:30

21 MR. MULLINS: Let me go off the 14:30

22 record for a second? 14:30

23 THE VIDEOGRAPHER: We are now going 14:30

24 off the record. The time is 2:30 p.m. 14:30

25 (Recess.) 14:30

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Calello

THE VIDEOGRAPHER: We are back on the record. The time is 3:18 p.m. This is the beginning of media labeled number 4.

MR. MULLINS: Thank you.

We have no further questions.

I did want to state on the record we discussed earlier about producing written communications you may have had with Mr. Linzer, Mr. Brown or Ms. Salani about this lawsuit, so we would like to put a formal request for that on the record. Happy to discuss that in more detail afterwards.

But other than that, we are done from our end, unless you have questions?

MR. SANDS: Sure. Please follow up with a request in writing, and we will respond.

MR. MULLINS: Great.

MR. SANDS: If we can just get off the record and we will just take a moment and then let you know if we have any questions as well.

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1 Calello

2 MR. MULLINS: For sure. 15:18

3 THE VIDEOGRAPHER: We're now going 15:18

4 off the record. The time is 3:18 p.m. 15:18

5 (Recess.) 15:30

6 THE VIDEOGRAPHER: We are back on 15:30

7 the record. The time is 3:30 p.m. 15:30

8 EXAMINATION BY 15:30

9 MR. SANDS: 15:30

10 Q. Okay. I just have a couple of 15:30

11 questions before we finish up. 15:30

12 Earlier today, you were asked if you 15:30

13 knew of other musicologists. 15:30

14 Do you recall that question? 15:30

15 A. Yeah. I mentioned to you I don't 15:30

16 know if I was clear on that because when I said, 15:30

17 No, I assumed that Barbara was included because 15:30

18 we were discussing it. 15:30

19 I just wanted to make sure that I 15:30

20 cleared that up, that she was recognized as a 15:31

21 musicologist when I recommended here. 15:31

22 Q. So is Barbara Salani a musicologist? 15:31

23 A. Yeah, yeah. 15:31

24 Q. Do you know any other musicologists? 15:31

25 A. No. No. 15:31

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1 Calello

2 MR. SANDS: Okay. I have no further 15:31

3 questions. Thank you. 15:31

4 MR. MULLINS: I think we can wrap it 15:31

5 up there. 15:31

6 THE VIDEOGRAPHER: We are now going 15:31

7 off the record. The time is 3:31 p.m., 15:31

8 and this is the end of the media labeled 15:31

9 number 4 concluding this video-recorded 15:31

10 deposition. 15:31

11 We are off the record. 15:31

12

13

CHARLES CALELLO

14

15 Subscribed and sworn to

16 before me this day

17 of MO , 2024.

18

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25

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STATE OF NEW JERSEY)
) ss:
COUNTY OF UNION)

In witness whereof, I have hereunto
set my hand this 25th day of January,
2024.

Mary F. Brown

MARY F. BOWMAN, RPR, CRR

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Calello

* * *ERRATA SHEET* * *

NAME OF CASE: Larball v. Dua Lipa

DATE OF DEPOSITION: 1/23/24

NAME OF WITNESS: CHARLES CALELLO

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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